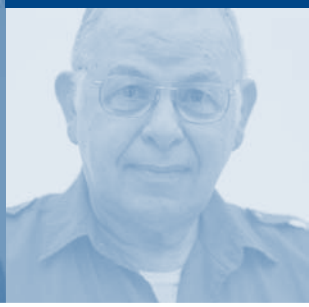
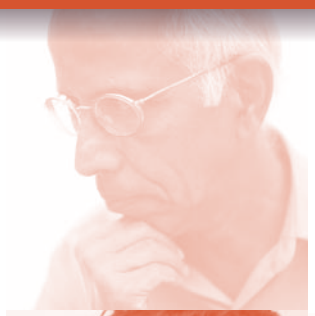




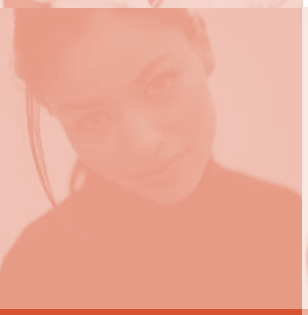


No Country of one's own

AN ADVISORY REPORT ON TREATY PROTECTION FOR STATELESS PERSONS IN THE NETHERLANDS










Advisory Committee on
Migration Affairs

REPORT

No Country of one's own

AN ADVISORY REPORT ON TREATY PROTECTION FOR STATELESS PERSONS IN THE NETHERLANDS

THE HAGUE, SEPTEMBER 2014

The ACVZ

The Advisory Committtee on Migration Affairs (ACVZ) in the Netherlands is an independent committee that advises Government and Parliament on immigration law and policy. International and EU-aspects as well as human rights issues are also adressed in the advisory reports. Furthermore the ACVZ reports on proposals to amend the Aliens Act 2000 and the Aliens Decree 2000.

Colophon

Advisory Report 'No Country of one's own'
Reported to the State Secretary of Security and Justice

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The original report is written in Dutch and was published in December 2013. Section 2.4 'Stateless persons in the Netherlands' and chapter 7 'Drafts of possible determination procedures' of the original Dutch report have not been translated.

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Content

Summary

No Country of one's own

An advisory report on treaty protection for stateless persons in the Netherlands

Worldwide, an estimated 12 million people have no nationality. In other words, they are stateless. Statelessness is a problem because possessing a nationality means that there is at least one country where one has the right to reside. Nationality confers a number of other important rights too: the right to identity documents, for example, or the right to return to your own country. Without papers proving who you are, it can be difficult to marry, enter into contracts or acquire diplomas. In addition, possessing a nationality makes a person a member of a particular political community. For all these reasons, the right to nationality is enshrined as a fundamental human right in the Universal Declaration of Human Rights.

To protect the stateless and to prevent statelessness, the international community concluded two major instruments: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Netherlands is a party to both. This means that it has obligations towards stateless persons living in the Netherlands and towards stateless children born on Dutch territory. In addition, it means that, with certain exceptions, the Netherlands may not deprive people of their Dutch nationality if they would then become stateless.

The United Nations has mandated UNHCR to protect the rights of stateless people and to prevent and reduce statelessness. Within this framework, it published in November 2011 a report entitled *Mapping Statelessness in the Netherlands*. The report's main conclusion was that the identification of stateless persons in the Netherlands is problematic and that, as a result, the rights of such persons living in this country are not guaranteed. The then Minister of the Interior and Kingdom Relations and the Minister for Immigration, Integration and Asylum Policy refuted this conclusion in October 2012. The UNHCR report and the ministers' response prompted the ACVZ to draw up an advisory report on statelessness. The State Secretary of Security and Justice supported this decision with a letter requesting an advisory report on 14 November 2012.

This advisory report relates solely to persons who are not considered as nationals by any state under the operation of its law. These people are also known as '*de jure* stateless persons'. Earlier this year the ACVZ published its advisory report *Where there's a will but no way* on the policy concerning aliens who, through no fault of their own, are unable to leave the Netherlands. The Committee considers these people to be *de facto* stateless.

Question addressed by study and methods used

In this report the ACVZ answered the following question.

> How do Dutch legislation and practice concerning the protection of stateless persons and the prevention and reduction of statelessness measure up to the international obligations of the Netherlands in this area?

To answer this question a literature and case-law review was carried out, relevant conventions, statutes and secondary legislation were studied and interviews were

conducted with academics, the staff of ministries, municipalities and implementing bodies, NGOs, interest groups and UNHCR. Statistics Netherlands (CBS) supplied data on persons registered as 'stateless' or as 'nationality unknown' in the Municipal Personal Records Database (GBA). The data on people registered as of unknown nationality were requested because this category also includes stateless persons. The European Network on Statelessness supplied information on procedures relating to statelessness in other countries.

The results of the study are reproduced in chapters 2 to 4 of the full report.

Findings

Determination of statelessness

To assess whether a person is eligible for protection under the conventions on statelessness, a procedure for determining statelessness is a practical necessity. Only through such a procedure can a state clarify whether someone is stateless or does in fact possess a nationality. Furthermore, a good faith interpretation of the 1954 Convention obliges states to establish such a procedure. That is the only way to ensure that the provisions of the Convention are put into effect. At present, the Netherlands has no proper determination procedure. In 2012, the Minister of the Interior and Kingdom Relations and the Minister for Immigration, Integration and Asylum Policy argued that statelessness was determined in the Netherlands through registration in the GBA. However, registration as stateless person in the GBA requires that statelessness is already apparent and documented. Therefore this registration cannot be qualified as a determination procedure. In addition, only persons who are permitted to stay in the Netherlands can be registered in the GBA, despite the fact that the Convention also enshrines rights that do not require lawful presence.

Though the no-fault procedure used to be called the 'stateless procedure', statelessness is no longer a condition for obtaining a no-fault residence permit under current policy. As a result, whether a person is stateless or not is no longer assessed in the no-fault procedure. For this reason, it cannot be regarded as a determination of statelessness. The ACVZ therefore recommends that a statelessness determination procedure be established.

Residence rights of stateless persons

The Preamble to the 1954 Convention states that the aim of the Convention is 'to assure stateless persons the widest possible exercise of [..] fundamental rights and freedoms'. The same sentence, but this time with reference to refugees, can be found in the Preamble to the 1951 Refugee Convention. This is no coincidence as both Conventions were concluded around the same time, in the aftermath of the Second World War. Both conventions had the aim of providing international protection to people who found themselves outside their own country and who could not rely on that country's protection. The Refugee Convention can therefore serve as an aid in interpreting the 1954 Convention, though no absolute value should be accorded to such interpretations. With certain exceptions, recognition as a refugee is nowadays usually accompanied by residence rights. In most countries this is not or not yet the case for stateless persons. The difference is often explained as a result of the absence in the 1954 Convention of two important articles (31 and 33) in the Refugee Convention. These articles state that no penalties may be imposed on refugees who enter a Contracting State illegally and that it is prohibited to return a person without first determining whether he or she is a refugee within the meaning of the Convention (also known as the principle of *non-refoulement*). It is in fact argued that the absence of these articles is the reason why residence rights need not be accorded to stateless

persons, unlike refugees. The ACVZ does not agree with this reasoning. According to the committee, the interpretation of the 1954 Convention cannot be based solely on the Refugee Convention. It argues that the question of what follows or does not follow from an autonomous interpretation of the provisions of the Convention itself needs to be addressed. In the opinion of the ACVZ, it follows from an autonomous interpretation of the Convention that a residence permit should be granted to persons who are recognised as stateless, unless exclusion grounds apply. Many of the rights accorded to the stateless in the 1954 Convention would otherwise be a dead letter and would only be granted to those persons who held such rights anyway because they already possessed a residence permit. This would not be in accordance with the aim of the Convention. Through the grant of a residence permit, recognised stateless persons in the Netherlands are able to exercise their rights. Stateless persons cannot, after all, solve problems arising from irregular residence in the Netherlands by returning to the state of which they are a national, as other aliens in this situation generally can. As a result of the Benefit Entitlement (Residence Status) Act (*Koppelingswet*), the refusal of a residence permit to recognised stateless persons in the Netherlands drives them into the margins of society, where they lack the means to build a decent life. Furthermore, the EU Return Directive obliges the Netherlands to take measures to prepare for return, when in fact this is often impossible in the case of stateless persons and is moreover incompatible with the protection of the stateless. For all these reasons, the ACVZ recommends incorporating a new purpose of residence for stateless aliens in the Aliens Act.

Naturalisation of stateless persons

The 1954 Convention urges states to facilitate the naturalisation of stateless persons as far as possible. In the Netherlands stateless persons may apply for naturalisation after three years of legal residence instead of the five years that applies to other aliens. However, they can only do so if they are registered as stateless in the GBA, which for a number of them is impossible as they have no documents attesting to their statelessness. Because there is no effective way to determine statelessness in the Netherlands, this option of fast-track naturalisation for the stateless loses much of its practical significance. Stateless persons who have a regular residence permit and are not registered as stateless in the GBA must in addition submit a passport in order to obtain naturalisation, which is of course impossible.

But even persons who are registered as stateless encounter problems with naturalisation. Although they need not submit a passport, they do have to prove their identity by means of a birth certificate. As a result, stateless persons in possession of a regular residence permit often cannot be naturalised, first because there is no proper determination procedure, and second - if their statelessness has been recognised - because they have to submit documents they do not possess and in many cases have never possessed. The ACVZ therefore recommends that persons who have been recognised as stateless under the future determination procedure should not be required to submit documents for the purpose of naturalisation. This means that stateless persons will be treated in the same way as refugees in the process of acquiring Dutch nationality.

Stateless children born in the Netherlands

Dutch nationality is largely acquired on the basis of parentage: if one of the parents is a Dutch national, a new-born child automatically acquire Dutch nationality. This is known as the *ius sanguinis* principle. In some countries every child born in the territory of that country automatically acquires its nationality, on the basis of the *ius soli* principle. As a consequence of migration, these principles may conflict with each other, leading to children being born stateless. One of the aims of the 1961 Convention is to reduce statelessness at birth.

Children who are born in the Netherlands and have been stateless since birth can acquire Dutch nationality by option. The Netherlands Nationality Act requires them to have had a residence permit for at least three years. The ACVZ believes this to be incompatible with the 1961 Convention since the Convention precludes the imposition of a residence permit requirement. It uses the term 'habitually resided', not 'legally resided'. Various sources have confirmed that habitual residence is not meant to signify residence on the basis of a residence permit. Habitual residence signifies that a person's everyday, personal life is lived in a certain place. The ACVZ therefore recommends that the residence permit requirement for applying for Dutch nationality by option be dropped in the case of stateless children.

Statelessness in other countries
Worldwide, 12 countries have a statelessness determination procedure. In the European Union these are: Belgium, France, Hungary, Italy, Latvia, Spain and the United Kingdom. The procedure varies considerably from country to country. The ACVZ took a closer look at practices in Belgium, France, Hungary, Spain and the United Kingdom. The greatest similarities between these countries are that in all of them, with the exception of Belgium, the immigration service carries out the procedure, and that, again with the exception of Belgium, these countries attach residence rights to the recognition of statelessness. However, Belgium is planning to make changes to its determination procedure following a UNHCR report on how statelessness is identified in Belgium. Finally, the ACVZ notes that the number of applications for a determination of statelessness is low, in comparison with the migration figures. On the basis of this study, the Committee concludes that no single country has a determination procedure that can serve as an example worth following.

Recommendations

1) **Establish a statelessness determination procedure backed by guarantees.**
   a) Adopt for the purposes of the procedure the definition of 'stateless persons' as in the 1954 Convention (*de jure* stateless persons).
   b) Open the procedure to all aliens on Dutch territory.
   c) Permit aliens to stay in the Netherlands during the procedure.
   d) Refer aliens who raise asylum issues as well as statelessness first to the asylum procedure.
   e) Adopt a shared burden of proof in the determination procedure.

2) **Incorporate in the Aliens Act a new residence ground for the purpose of statelessness.**
   a) Categorise this residence permit for stateless aliens under the regular temporary or non-temporary humanitarian residence permit.

3) **Include in the procedure the exclusion grounds contained in article 1, paragraph 2 of the 1954 Convention. Additionally, an analogous application of article 31 of the 1954 Convention allows for the exclusion of persons that pose a risk to national security and public order. Also, persons who have residence rights elsewhere can be excluded from protection.**

4) **Waive the birth certificate requirement for naturalisation in the case of recognised stateless persons.**

5) **Drop the legal residence requirement for stateless children born in the Netherlands who wish to acquire Dutch nationality by option.**

CHAPTER 1

Introduction

1.1 Background

In 2011 it was 50 years since drafting of the Convention on the Reduction of Statelessness was completed. The UNHCR has seized upon this anniversary to encourage States to increase their efforts in combatting problems related to statelessness. Within this context, the UNHCR published its report Statelessness in the Netherlands in November 2011.[1] The most important conclusion of this report is that the identification of stateless persons in the Netherlands is not properly carried out, with the result that the rights of stateless persons living in the Netherlands are not guaranteed. In its report, the UNHCR took the view that the Netherlands needs to introduce a determination procedure for stateless persons which is linked to a right of residence, unless the stateless person has a right of residence elsewhere. The present no-fault policy, on the basis of which a residence permit may be issued to aliens, including stateless persons who through no fault of their own cannot leave, is insufficient as a stateless persons' procedure.

In August 2012, the then Minister of the Interior and Kingdom Relations, and the Minister for Immigration, Integration and Asylum, in their reaction to this report rejected the introduction of a determination procedure because the current registration of statelessness in the Municipal Personal Records Database (GBA) was considered to be adequate. The ministers did not consider it desirable that the determination of statelessness should lead to a new ground for admission.[2] The ministers also pointed out that the no-fault policy was originally intended as an admission procedure for stateless persons, and was only later declared as being applicable to other aliens. The ministers took the view that the no-fault policy can provide a solution to problems related to statelessness.

The UNHCR report and the ministers' response prompted the Advisory Committee on Migration Affairs [ACVZ] to draw up an advisory report on statelessness. During the same period the Committee decided to issue an advisory report about the no-fault policy. This advisory report appeared on 1 July 2013.[3] The connection between both advisory reports will be discussed in sections 2.2. and 3.2.2.

1.2 Research question and request for an advisory report

The Netherlands is a party to the two most important international conventions for stateless persons: the 1954 Convention relating to the Status of Stateless Persons (hereafter the 1954 Convention) and the 1961 Convention on the Reduction of Statelessness (hereafter the 1961 Convention). The aim of these Conventions is to alleviate the negative consequences of statelessness as well as to prevent statelessness.[4]

1 UNHCR, Statelessness in the Netherlands, The Hague: United Nations High Commissioner for Refugees 2011, p. 9.

2 Policy response to UNHCR-report: 'Statelessness in the Netherlands', 20 August 2012.

3 Where there is a will, but no way. Advisory report about the application of the policy for aliens who through no fault of their own cannot leave the Netherlands. The Hague: ACVZ, 2013.

4 The conventions are discussed in detail in section 3.1.

The question of whether and how the Netherlands is fulfilling its treaty obligations with regard to stateless persons runs as a red thread through this advisory report. The Committee's recommendations answer the question as to how the Netherlands can best fulfil its treaty obligations.

For this advisory report the Committee formulated the following research question:

How do Dutch legislation and practice concerning the protection of stateless persons and the prevention and reduction of statelessness measure up to the international obligations of the Netherlands in this area?

The research question involves the following sub-questions:
a. what is understood by statelessness in legislation and in the literature?
b. what are the treaty obligations with regard to the protection of stateless persons according to the 1954 Convention relating to the Status of Stateless Persons?
c. what are the treaty obligations with regard to the prevention and reduction of statelessness according to the 1961 Convention on the Reduction of Statelessness?
d. to what extent does the Netherlands satisfy its treaty obligations?

To answer the research question, we also looked at how other countries deal with statelessness. This gives rise to the final sub-question:

e. is it possible to distil recommendations for the Netherlands from the practices in other countries?

After the Committee decided to issue an advisory report about statelessness and had already begun its research, the State Secretary of Security and Justice requested the Committee on 14 November 2012 to carry out research in the short term into Dutch practice regarding the determination of statelessness. The request contained a number of research questions and sub-questions.[5] The questions posed by the State Secretary are answered implicitly through the line of argument in the advisory report.

In this advisory report a stateless person is defined as: a person who is not regarded by any State as a citizen under the operation of its law.[6] In short: a person who is stateless has no nationality.

The problem of statelessness finds its origin in nationality law, so that an ultimate solution can be found only through nationality law. The Netherlands is confronted with stateless persons principally within an immigration context. It follows from this that immigration law aspects of statelessness play at least as important a role in the Netherlands. For this reason the political and social debate in the Netherlands in recent years has often been about how immigration law deals with stateless aliens. That is why both the Netherlands Nationality Act and the Aliens Act play a central role in this advisory report.

5 The letter of the State Secretary has not been translated, refer to the request for an advisory report, appendix 1 of the original Dutch report.

6 The autonomous English treaty definition reads 'a person who is not considered as a national by any State under the operation of its law', art. 1 of the 1954 Convention.

1.3 Research methods

A literature search was carried out for this advisory report and the relevant case law was studied. As well, relevant conventions and laws and their operation in subsidiary legislation have been studied.

During an initial exploratory phase, on the basis of semi-structured interviews, the Committee had discussions with relevant implementing agencies and with the policy departments of various ministries, legal aid providers, and experts in the area of statelessness, immigration and nationality law. Several NGOs were also consulted and discussions were held with other interested parties in the field.[7] In order to gain insight into the practice of registration of statelessness within the Municipal Personal Records Database (GBA), discussions were held with municipal authorities. A list of the organizations consulted is included in Appendix 1.

Figures were requested from Statistics Netherlands (CBS) in order to gain insight into how many people are registered in the GBA as stateless and how many aliens are registered as being of 'nationality unknown'. At the request of the Committee, the chairman of the European Network on Statelessness[8] listed the EU Member States which have determination procedures for statelessness. On the basis of these, the Committee has assessed whether best practices are to be discerned from these procedures. Belgium was not included in the list provided by the ENS. The Committee itself has studied the literature regarding how in Belgium statelessness is determined by the civil courts.

At the end of the research project a small scale meeting of experts was held in order to present the research findings for review by academics who are expert in the areas of statelessness, nationality law and immigration law. A legal draughtsman from the Ministry of Security and Justice specialized in the area of the Netherlands Nationality Act also participated in this meeting of experts. During this meeting of experts, the Committee also presented in broad outlines the direction of the conclusions of this advisory report.

This advisory report was prepared by a subcommittee, consisting of mr. dr. H.H.M. Sondaal, mr. A.C.J. van Dooijeweert, Prof H. Battjes, Prof C.C.J.H. Bijleveld and Assist Prof T. de Lange. From the secretariat of the ACVZ, G.M.B. van Aalst-van Adrichem LLM, S.A.A. Avontuur MA, mr. D.J de Jong and Dr N. Oudejans also worked on this advisory report.

1.4 Structure of the advisory report

Chapter 2 is devoted to a detailed explanation and description of the concept of statelessness. As well, the causes of statelessness are discussed. Chapter 3 describes the applicable legal framework. How other (European) countries deal with statelessness is described in Chapter 4. Chapter 5 answers the question whether the Netherlands is complying with its treaty obligations with regard to the protection of stateless persons and with regard to the prevention and reduction of statelessness. Chapter 6 reports the conclusions and recommendations based on the analysis in Chapter 5.

7 See appendix 1: Persons and authorities consulted.

8 A partnership among European NGOs in the area of statelessness.

CHAPTER 2

Statelessness

2.1 Terminology

2.1.1 What is statelessness?

All stateless persons have at least one thing in common: they don't have a nationality. The formal definition of statelessness which is set out in the 1954 Convention has the lack of nationality at its core. Article 1 of that Convention defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law.' Several causes can underlie statelessness.[9] Furthermore, the problems which stateless persons encounter vary depending on the context in which statelessness occurs. For that reason it is not easy to describe the situation of statelessness without ambiguity. Statelessness interferes in various ways with the lives of people affected by it. A stateless person who is living in the country where he has established himself in freedom and with dignity will presumably experience his statelessness differently from someone who because of his statelessness has to deal with economic exclusion and social marginalization. Persons who are stateless for a long time are in a difficult position that is quite different from that of someone whose situation of statelessness can be resolved by a quick and easy acquisition or restoration of a nationality. Because the situation of statelessness in practice takes many forms, a somewhat theoretical approach is meaningful for gaining the clearest possible picture.

As indicated, statelessness is the absence of nationality. In order to know the consequences of statelessness it is therefore crucial to know what the function of a nationality is. In general, the function of nationality is threefold:

- In the first place, nationality is a formal legal status which identifies the individual in terms of rights, obligations and freedoms;
- In the second place, nationality makes clear which State is responsible for guaranteeing and protecting these rights, obligations and freedoms;
- Finally, nationality delineates the group of individuals for whom the State is responsible from aliens who happen to be in the territory of the State.

Nationality, in short, is a planning mechanism that distributes individuals across various States,[10] and which is used to make a distinction between a State's own citizens and aliens with regard to certain fundamental rights, such as the right to vote.[11] The distinction between a State's own citizens and aliens presupposes that aliens are considered to exercise such fundamental rights in relation to the State of which they are citizens.

Stateless persons complicate the classical distinction between citizens and aliens.[12] After all, because stateless persons are not citizens of any State and are, therefore, aliens everywhere, it is anything but evident where, in which State, they can exercise

9 The causes of statelessness are discussed in section 2.3.

10 P. Weis, Nationality and Statelessness in International Law, Alphen aan de Rijn: Sijthoff & Noordhoff International Publishers, 1979, p. 53.

11 G.R. de Groot & M. Tratnik, Nederlands nationaliteitsrecht [Dutch Nationality Law], Deventer: Kluwer, 2010, p. 2.

12 See J. Hathaway, The Rights of Refugees under International Law, Cambridge: Cambridge University Press, 2005, p. 5.

their fundamental rights as human beings and citizens.[13] Because nationality indicates where, that is to say within the borders of which State, someone is considered to be able to exercise particular rights and to enjoy legal protection, statelessness makes clear that someone legally speaking does not enjoy these rights anywhere.[14] In the literature, statelessness is thus frequently described as a legal no man's land.

2.1.2 Nationality and rights

Nationality is an important starting point for the possession of rights. The right to a nationality is, therefore, one of the fundamental human rights in the 1949 Universal Declaration of Human Rights (UDHR). The importance of nationality is also underlined in the Preamble to the 1966 International Covenant on Civil and Political Rights (ICCPR), which states that the free person enjoys his freedom as a citizen of a State. Which rights derive from nationality is different in every State. Nevertheless, there are four rights one can point to that are linked exclusively to a nationality and which are at the core of nationality.

1 Nationality and identity
As stated above, nationality identifies the individual in terms of rights and obligations. Through this identification the State knows who its subjects are, and this is important because there are always aliens present within the territory of the State. Because of this narrow connection between nationality and identity,[15] as a general rule identity documents are issued by States only to their subjects. For anyone who is not recognized as a citizen of a State it can, therefore, be difficult to obtain an identity document. Due to the lack of such a document, a stateless person can subsequently encounter difficulties with, for example, the registration of the birth of a child, the conclusion of a marriage, the conclusion of an employment contract or obtaining a diploma. The lack of identity papers was at the beginning of the twentieth century one of the most important reasons for the international community to address the issue of stateless persons.[16]

2 Nationality and freedom of movement
Just as a State as a general rule issues identity papers only to its own subjects, so are travel documents generally also issued only to its own subjects. This makes it difficult for stateless persons to leave the country where they reside in the normal way and to return to it. The right to reside in a country, the right to leave it and to return to it together constitute the right to freedom of movement as formulated, inter alia, in Article 15 of the UDHR[17] and Article 12 section 4 of the ICCPR.[18]

13 See L. van Waas, Nationality Matters. Statelessness under International Law, Antwerp: Intersentia, 2008, pp. 224-225.

14 See N. Oudejans, Asylum. A Philosophical Inquiry into the International Protection of Refugees, (PhD. Tilburg University 2011), pp. 52-53.

15 Some human rights treaties make the connection between nationality and identity explicit. So, article 7 of the International Convention on the Rights of the Child (ICRC) specifies that the child has the right from birth to a name and a nationality and to be registered. Article 8 then specifies that the child has the right to retain his or her identity, such as nationality, name and family ties.

16 See Van Waas 2008 p. 371.

17 Article 15 section 2 of the Universal Declaration of Human Rights specifies that everyone has the right to leave any country whatsoever, including his own, and to return to it.

18 Article 12 section 2 of the International Covenant on Civil and Political Rights specifies that everyone has the right to leave any country whatsoever, including one's own country. Article 12 section then 4 specifies that no one may be arbitrarily denied the right of returning to his own country.

Freedom of movement is, therefore, a second core function of nationality. Stateless persons consequently run an increased risk of ending up in an irregular situation when they leave their country without travel documents (and identity papers) and cross an international border. It is difficult for them to remedy this irregular situation by returning to the country of origin. After all, no State in the world is responsible for the re-admission of a stateless person without right of residence in its territory. Since nationality guarantees not only the right of travelling from one's own country in a legal manner, but also guarantees the right of returning to, and staying in, one's own country, statelessness means that the right to freedom of movement is also impinged.[19]

3 Protection abroad
A third function of nationality is the guarantee of protection by one's own State abroad. An international law consequence linked to nationality is that States have the right to protect their citizens abroad against the actions of the State where they reside when those actions harm them and are in conflict with international law.[20] Besides this diplomatic protection, States are permitted, even if there is no question of a breach of international law, to provide consular assistance to their own citizens, such as arranging legal aid or issuing travel documents. In order to exercise diplomatic protection and consular assistance it is an absolute requirement that the person the State is assisting possesses the nationality of that State.[21] A stateless person, when staying abroad, is not able to turn to a diplomatic representative for protection and assistance.[22]

4 Nationality and citizenship
Finally, nationality and citizenship are closely related. The possession of nationality means not only that someone is a citizen of a State, but also that he is a member of the political community of that State. In a democratic society, therefore, nationality represents an emancipatory ideal. As members of a community, the citizens of a State can participate in the political process. Stateless persons are excluded from this participation. They are not represented and are subject to laws and regulations of a country in the creation of which they have had no part because as non-members of the political community they have no access to the democratic process. Because States reserve important political rights for their own citizens, statelessness stands in the way of full participation in the society. Statelessness, therefore, often goes hand in hand with political invisibility and powerlessness.

In short: nationality guarantees that there is at least one State where one's existence and identity are registered and documented, where one has the right to be admitted and to reside, where one's voice is heard and where nationality offers protection abroad. Statelessness involves the risk of one's existence not being recognized anywhere, of one not having the right of access and residence anywhere, of not being visible and not being heard anywhere and of being an alien everywhere in the world and, without protection of

19 Van Waas 2008 p. 219.

20 H.U. Jessurun d'Oliveira, 'Nationaliteit en diplomatieke bescherming: een up-date, een vooruitzicht' [Nationality and diplomatic protection: an update, a prospect], in: De Th.M. de Boer e.a. (red.), Strikwerda's Conclusies [Strikwerda's Conclusions], Deventer: Kluwer, 2011, p. 250-251.

21 For the sake of completeness, the following is added: according to article 20 of the Treaty establishing the European Community every citizen of the Union in third countries whose own Member State is not represented can call on the protection of the diplomatic and consular authorities of every other Member State which is represented.

22 The International Law Commission, however, has explicitly expressed its opinion about diplomatic protection for stateless persons. Article 8 section 1 of the 2006 Draft Articles on Diplomatic Protection (No. 10 A/61/10) specifies: 'A State may exercise diplomatic protection in respect of a stateless person who, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State'.

one's own State, being at the mercy of the benevolence (or caprice) of the country where one is located.

The 1954 Convention restores this lack of protection by granting persons without a nationality a replacement (and temporary) status as a stateless person and the international protection resulting from this. Chapter 3 deals with the content of the 1954 Convention. The measures which aim to prevent and reduce statelessness are also discussed there, and these have been incorporated in the second important international convention on statelessness, the 1961 Convention.

2.2 *De jure* and *de facto* statelessness

As described above, nationality is the foundation for the possibility of exercising one's rights in, and of enjoying the protection of, a particular State. That is why a distinction is made in international law between the *right to nationality* on the one hand and the *rights which derive from nationality* on the other hand. Statelessness as intended in the 1954 Convention refers to the absence of nationality, and not to the lack of rights which are linked to a nationality. The Convention addresses a formal legal lack of protection due to the lack of nationality and, therefore, refers explicitly to what is correctly called *de jure* statelessness.

The distinction between *de jure* and *de facto* statelessness forms the subject of an ongoing discussion about the precise meaning of statelessness and about the scope of the 1954 Convention and, *mutatis mutandis*, the 1961 Convention. The Committee notes that *de facto* statelessness plays a prominent role in the legal[23], academic[24] and social debate about statelessness. During almost all exploratory interviews held by the Committee in preparation for this advisory report the issue of *de facto* statelessness was, consequently, brought into the discussion. For the sake of delimiting this advisory report, the Committee considers it important to clarify the meaning and relevance of the concept of *de facto* statelessness. To this end, the Committee conducted an extensive literature search into *de facto* statelessness. The picture that emerges from studying the literature is anything but consistent; there are various views on *de facto* statelessness, various meanings are attributed to the concept, and it is applied in a wide range of contexts.[25]

23 From both international and national case law it is evident that *de facto* statelessness is a subject of juridical discussion and interpretation. So, the Inter-American Court of Human Rights in the 2005 landmark case of *Yean and Boscio v Dominican Republic* considered whether statelessness is the result of the lack of a nationality or of possessing a nationality which is not effective. See *Case of Yean and Boscio v Dominican Republic*, September 8, 2005, Consideration 142: 'Statelessness arises from the lack of nationality, when an individual does not qualify to receive this under a State's law, owing to arbitrary deprivation, or to the granting of a nationality that, in actual fact, is not effective.' And only very recently the Central Netherlands Court dealt with an appeal against the refusal of the Municipality of Utrecht to alter the status in the GBA of plaintiffs from 'nationality unknown' to 'stateless', where the individuals concerned argued that this alteration was warranted because they were *de facto* stateless.

24 See, for example, the special issue on 'Statelessness', A&MR, 2013-5/6, particularly the contributions by Van Waas, Rodrigues and Van Melle.

25 See, for example, D.S.Weisbrodt & C. Collins, 'The Human Rights of Stateless Persons', *Human Rights* Quarterly 2006; C. Batchelor, 'Statelessness and Establishing Nationality Status', in: *Aan de grenzen van het Nederlanderschap*, The Hague: Ministry of Justice, 1998, p. 22-25; C. Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', *International Journal of Refugee Law* 1998, p. 156-183; UNHCR & IPU *Nationality and Statelessness. A Handbook for Parliamentarians*, Geneva: IPU 2005; A. Busser & P. Rodrigues, 'Stateless Roma in Nederland', A&MR, 2010, p. 384-391; Dokters van de Wereld, *Staatloos maakt radeloos. De situatie van staatloze Roma in Nederland in 2009*, Amsterdam: Dokters van de Wereld; C. Swayer (e.a.), Statelessness in the European Union: *Displaced, Undocumented and Unwanted*, New York: Cambridge University Press, 2011; M. Gibney, 'Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens', in *Human Development Research Paper*, 2009-10.

The essence of the discussion is the question whether statelessness is limited to *de jure* statelessness or whether statelessness does not also comprise *de facto* statelessness.[26] The reason for the discussion is the Final Act of the 1961 Convention in which States are advised to treat persons who are *de facto* stateless as much as possible as if they were *de jure* stateless in order to enable them to obtain an effective nationality.[27]

The reference to an effective nationality in the Final Act is a reminder that the possession of nationality does not always guarantee the rights which normally derive from nationality. By placing the importance of an effective nationality center stage, this recommendation draws attention to the lack of protection that goes hand in hand with an ineffective nationality. One has an ineffective nationality if one does not have the rights which can normally be derived from having a nationality. While the absence of nationality is the essence of *de jure* statelessness, *de facto* statelessness is all about having an ineffective nationality. Although there is no consistent definition of *de facto* statelessness, it can be said that *de facto* statelessness in any case expresses the fact that despite their nationality, one lacks the protection of the State of which they are a citizen. In other words, *de facto* statelessness refers to the impossibility of exercising rights which are linked to nationality, and points, therefore, not to a legal lack of protection such as *de jure* statelessness, but to a factual lack of protection by the State of which someone is a citizen.[28]

De facto statelessness does not have a recognized legal definition on the basis of which persons who require international protection can be identified. No corresponding international law obligation exists therefore for the protection of *de facto* stateless persons.

In order to arrive at a clear and distinctive concept of *de facto* statelessness, the Committee has opted to look for a connection with the historical development of the concept,[29] taking into account the genesis of the Convention relating to the Status of Refugees, the 1954 Convention and the 1961 Convention.[30] The definition of *de facto* statelessness as reported in a study by the United Nations Economic and Social Council in 1949: *A Study on Statelessness, provides guidance: 'Stateless persons de facto are persons who, having left the country of which they are nationals, no longer enjoy the protection and assistance of their national states, either because the authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.'*[31]
By means of the Convention relating to the Status of Refugees, the international community recognizes fear of persecution in or by one's own State as a valid reason

26 So, for example, the Court in The Hague determined in 2003 that the scope of the no-fault policy – which prior to the alteration in 2005 applied only to stateless aliens – was unclear since the State could not give an answer to the question whether statelessness includes *de facto* statelessness. See LJN no. AIO720, case no. AWR 03/12080.

27 Final Act as cited in H. Massey, 'UNHCR and *De Facto* Statelessness', 2010<http://www.unhcr.org/4bc2ddeb9.html> (18-07-2013).

28 Oudejans 2011, p. 48.

29 See UN Economic and Social Council, *A Study of Statelessness*, August 1949, E/1112;E/1112/Add.1

30 From the genesis of the Convention Relating to the Status of Refugees, as well as later the 1954 Convention and the 1961 Convention, it is evident that the question of whether the formal definition of statelessness also includes *de facto* statelessness was a thorny issue even during the creation of said conventions. Again and again, the discussion blazed up anew whether *de facto* statelessness had to be included in the formal definition of statelessness. Eventually, after long deliberations and many discussions it was decided to refer the issue of *de facto* statelessness to the Final Act of the 1961 Convention. See N. Robinson, *Convention Relating to the Status of Stateless Persons. Its History and Interpretation,* New York: UNHCR, 1997 (reprint, first print by the World Jewish Congress in 1955) <www.unhcr.org>; see also P. Weis & R. Graupner, *The Problem of Statelessness*. World Jewish Congress, 1944; H. Massey 2010. Oudejans 2011.

31 UN E/1112;E/1112/add.1.

for refusing the protection and assistance of one's own State.[32] The reference in the aforementioned quote to persons who themselves refuse protection has, therefore, reference to refugees. Within the context of the discussion about statelessness, there is, therefore, still the important possibility that protection is refused to a person by the State of which he is a citizen. If we restrict ourselves to this, then persons are *de facto* stateless if:
- they have a nationality, and
- are located outside the State of which they are citizens, and
- protection has been refused to them by that State.

The concept of *de facto* statelessness derives its content, therefore, based on the function of nationality in international law.[33] There is an issue of *de facto* statelessness if diplomatic protection and consular assistance, including the right of return and re-admission to the territory, has been denied.[34] That is why the problem of *de facto* statelessness occurs in an immigration law context, namely when a State refuses to take back its own citizen. If a person has no residence permit in the country where he is living and, therefore, does not enjoy the protection of the State in whose territory he is living, nor can he return to the country he comes from in order to place himself once more under the protection of the State of which he is a citizen, then he ends up in the same legal vacuum as someone who is *de jure* stateless.[35] In the Netherlands, *de facto* stateless persons can appeal to the no-fault policy.[36] The Committee recently issued another advisory report about this.[37] This advisory report restricts itself, therefore, to the issue of *de jure* statelessness. In the course of this advisory report, therefore, the terms 'statelessness' and 'stateless person' refer only to *de jure* stateless persons.

32 Indeed, it is evident from the genesis of the Convention Relating to the Status of Refugees and the 1954 Convention that *de facto* statelessness first and foremost was a conceptual resource for identifying and demarcating the refugee problem from the issue of statelessness. Such a distinction was necessary because before this refugees and stateless persons were brought together under the general denominator of 'unprotected persons.' See P. Weis 1979 p. 161.

33 See section 2.1.

34 In preparation of *Guideline No 1 The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons* by UNHCR, in 2010 an expert meeting took place in Prato. During this expert meeting this definition of *de facto* statelessness was brought forward, and eventually ended up in the *Summary Conclusions*: 'The definition is as follows: *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality'. (UNHCR, Summary Conclusions Expert meeting 'The Concept of Stateless Persons under International Law' 27-28 May 2010, p.6). Eventually, this definition did not end up in Guideline No 1, but found its way into Guideline No 3 *The Status of Stateless Persons on the National Level*, section 48: '*de facto* stateless persons are unable to return immediately to their country of nationality'.

35 This also corresponds to UNHCR Guideline No 3, section 48 and 49: '*de facto* stateless persons are unable to return immediately to their country of nationality, providing them at the very minimum with temporary permission to stay promotes a degree of stability. Thus, States may consider giving them a status similar to that recommended above in section 40 for stateless persons who have the possibility of securing protection elsewhere. In many cases an interim measure of this nature will prove sufficient as return will become possible through, for example, improved consular assistance or a change in policy with regard to consular assistance for such individuals'.
And: 'Where the prospects of national protection appear more distant, it is recommended to enhance the status of *de facto* stateless persons through the grant of a residence permit similar to those granted to persons who are recognised as stateless pursuant to the 1954 Convention. In general, the fact that *de facto* stateless persons have a nationality means that return to their country of nationality is the preferred durable solution. However, where the obstacles to return prove intractable, practical and humanitarian considerations point towards local solutions through naturalization as the appropriate response'.

36 For the relationship between the no-fault policy in the Netherlands and *de facto* statelessness, see also H. Massey 2010, p. 64-65: 'Being *unable* to avail oneself of protection implies circumstances that are beyond the will of the person concerned. Such inability may be caused either by the country of nationality refusing its protection, or by the country of nationality being unable to provide its protection because, for example, it is in a state of war and/or does not have diplomatic or consular relations with the country of refuge'.

37 ACVZ, 2013.

2.3 Causes of statelessness

Awareness of the causes of statelessness makes the complexity of the (recognition of the) problem apparent. Insight into the causes can also contribute to the prevention of statelessness. This section, therefore, deals with the various causes which can lie at the foundation of statelessness.

Statelessness can be original or non-original. Original statelessness occurs at birth when in the absence of a birthright the child is not given any nationality. Non-original statelessness occurs at a later time in the course of life through the loss of nationality.[38]

Although in practice an interplay of factors is often involved, it is nevertheless possible to distinguish various causes of statelessness and to divide them into five categories which are discussed below.[39]

2.3.1 Technical causes of statelessness

Not obtaining or losing one's nationality can be the unintended and unforeseen consequence of deficiencies in the nationality legislation of a State, or of inconsistencies between the legislation of two or more States. These technical and legal causes of statelessness are related to the circumstance that every State by virtue of its sovereignty determines the conditions for granting nationality to newcomers (both newborns and immigrants). These conditions vary from State to State and are elaborations of the so-called 'genuine and effective link' doctrine. According to this doctrine the legal protection relationship between the individual and the State – which is formally established through nationality - is the expression of an already existing special relationship between the individual and the community. This special relationship is the foundation for granting nationality. Depending on what this special relationship is understood to mean, there are three distinguishing principles on the basis of which nationality is granted.

According to the classical view, because of birth there is a question of a special relationship between the individual and the community. This classical concept comprises two principles: *ius soli* and *ius sanguinis*. The idea behind *ius soli* is that the members of a community are linked with each other because they are bound to a shared and delineated place (the *territorium*) which they regard as theirs. Birth within the territory, therefore, provides the foundation for nationality. When the starting position is that birth connects the members of a community through the sequence of generations, then nationality is granted based on descent, that is to say *ius sanguinis*.

The special relationship between the individual and the community can also arise later in life, when the individual through his circumstances of life is dependent upon and becomes connected with a community, for example, by entering into family relationships (marriage, adoption) or through a long term stay. When this is the situation, nationality can be granted according to the principle of *ius domicilii*.

38 Weis 1979 p.161-162.: 'A person may either be stateless at birth, as the result of the fact that he does not acquire a nationality at birth according to the law of any state, or he may become stateless subsequent to birth by losing his nationality without acquiring another.'

39 The discussion of the causes of statelessness is drawn primarily from Van Waas 2008.

Original statelessness can arise when the principles of *ius soli* and *ius sanguinis* come into conflict, and at birth it is not clear which nationality the child should receive: that of the parents or that of the State in whose territory the child came into the world. More scenarios are conceivable in which such a conflict can occur, for example, when the parents are citizens of a State whose nationality grants only iures soli while the child is born abroad in the territory of a State where nationality is passed on by means of descent. The newly born child is then exposed to the risk of statelessness because it does not receive the nationality of its parents which is granted only on the basis of ius soli, nor does it receive the nationality of the State where it is born because it was not born within the correct lineage.

The fact that parents possess a nationality which has been passed on through descent (*ius sanguinis*) does not guarantee that the child, wheresoever in the world it was born, is assured of a nationality. If the State of which the parents are citizens has included the restriction in its nationality legislation that its nationality is not automatically passed on to the next generation, a child born to a family living abroad in a State without *ius soli* principle will lack a nationality at birth.

Technical factors can also create statelessness later in life.[40] Inconsistencies or imbalances in the nationality legislation of States can occur when a person's civil status changes, such as through marriage or divorce. Nowadays, in a majority of States a nationality change is no longer implemented automatically if a subject marries a non-citizen. Nor does divorce mean that the nationality acquired because of marriage is automatically lost. Nevertheless, marriage and divorce can sometimes cause statelessness, for example, when a partner voluntarily gives up his/her nationality without having secured a new nationality. Another scenario in which statelessness threatens is related to residence which can also be viewed as proof of the existence of a 'genuine link'. Precisely because residence in a State can be understood as the linking up of new loyalties and the severing of old ones, in some States it is the case that leaving one's own country and residing in another country is an indication that the individual has cut his bonds with the State whose nationality he possesses, which leads to the (automatic) loss of nationality. If the loss of the old nationality (sometimes after only a few months) does not coincide with the gaining of a new nationality (sometimes only after years of legal residence in the new country), statelessness is the result.

2.3.2 Arbitrary denial of nationality

Statelessness can also be the intended – but often disguised – consequence of the arbitrary actions of a State whereby citizenship is deliberately denied to certain persons or groups in order to marginalize, isolate and in some cases even to deport them. We are speaking then of an arbitrary denial of nationality.
In fact, every State has the right to determine under its own conditions who is a citizen and who is not, but the necessity of the distinction between citizen and non-citizen turns into arbitrariness if denial of nationality:
- is made on discriminatory grounds;
- is not accompanied by procedural safeguards, or otherwise
- illegitimate, that is to say, an act of abuse of power, outside the law.

40 For an example of this from Dutch practice, see B. De Hart & K. Groenendijk, 'Multiple Nationality: The Practice of Germany and the Netherlands' in eds. R. Cholewinski, R. Perruchoud & E. MacDonald, International Migration Law. Developing Paradigms and Key Challenges, The Hague: Asser Press, 2007, p. 99.

Arbitrary denial ('arbitrary deprivation') of nationality is one of the most common causes of statelessness. Arbitrary denial can refer to the failure to grant nationality at birth, the failure to grant nationality at a later time in life or the deprivation of nationality. Arbitrary denial of nationality can, therefore, lead to original and non-original statelessness. An example of the first is the exclusion of the birthright *iures soli* in the Dominican Republic of children whose parents come from Haiti and who reside in the republic illegally. The Inter-American Court of Human Rights qualified this as an arbitrary denial of nationality because the children were denied a nationality based on their ethnic origin and migration status.[41]
An example of non-original statelessness through arbitrary denial of nationality[42] is the denationalization within the context of the conflict between Ethiopia and Eritrea in which Ethiopia systematically began to denationalize its own citizens of Eritrean origin in order to be able to deport them to Eritrea.[43] Between 1998 and 2000, this befell an estimated 75,000 Ethiopian citizens. The deportations were preceded by the systematic collection and destruction of identity documents with the explicit objective of making it impossible for those deported to ever prove their original Ethiopian nationality.[44]

2.3.3 New States

A source of statelessness can occur when States collapse and/or succeed each other as a result of which the old nationality disappears and new nationalities arise.
The nationality legislation of States determines (explicitly) who is a citizen of the State and says (implicitly) who is excluded from citizenship. That the issue of membership of the State is one of the most fundamental issues in politics and law making, is clear when the constitution of a new State is examined. The first, and at the same time also the most complex, question which has to be answered is: who are the citizens?
This question is discussed explicitly when the following are involved: (i) the unification of States, (ii) the disintegration and the succession of States, (iii) the secession of States, or (iv) the transfer of territory. When a State collapses and a nationality disappears, the question inevitably looms how the new nationalities of the newly formed States are to be distributed among those who belonged to the citizenry prior to the collapse of the State. A conflict can then arise about which State is responsible for which persons. It is mainly in the context of the collapse of States, which can be partial as in the example of Eritrea given above, or complete as in the case of the Soviet Union and the Federal Republic of Yugoslavia,[45] that various factors, such as deficiencies and inconsistencies in legislation and discrimination, pile up and ultimately result in (large scale) statelessness. Many stateless persons have become stateless in this way.

The separation and independence of the Baltic States of Lithuania, Estonia and Latvia from the Soviet Union in the early nineties of the twentieth century illustrates how,

41 See Yean and Boscio Children v. The Dominican Republic, Inter American Court of Human Rights, Series C. Case no. 130, (2005) r.o. 156: "The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of a right to nationality or the enjoyment and exercise of rights".

42 Another well-known example concerns the stateless Bidun in Kuwait. See Human Rights Watch, *Prisoners of the Past. Kuwaiti Bidun and the Burden of Statelessness*, New York: Human Rights Watch, 2011.

43 See J. Campbell, 'The Enduring problem of Statelessness in the Horn of Africa: How Nation-States and Western Courts (Re)define Nationality', *International Journal of Refugee Law* 2011, p. 656-679.

44 See Human Rights Watch, 'Mass Expulsion and the Nationality Issue (June 1998-April 2002)', *The Horn of Africa War* 2003-3(15).

45 See G. Pudar, *Persons at Risk of Statelessness in Serbia*, 2011 <http://www.refworld.org/pdfid/4fd1bb408.pdf>

on the one hand, statelessness can be prevented when States collapse and, on the other hand, may arise precisely through the creation or restoration of new nationalities.[46] On the authority of the Russian central government, many people migrated from Russia, the Ukraine and Georgia between 1940 and 1960 to the Baltic States. When these States in about 1990 subsequently declared themselves independent, the question arose as to which State these Russian immigrants belonged and which nationality they should receive. Lithuania decided to grant its nationality to anyone who was lawfully residing in its territory during independence or during the transitional phase, including the Russian immigrants. Estonia and Latvia, on the other hand, took the explicit position that there was no question of a succession of States, so that only persons who had been citizens of Estonia or Latvia before the 'Russian occupation' and their descendants received the Estonian or Latvian nationality. The Russian immigrants, who in the meantime had been residing in these Baltic States for generations and were rooted there, were required to apply for Russian nationality without any certainty that this was even possible. When in 2004 Latvia and Estonia joined the European Union, 22.4 % and 12.5 % of the population respectively was stateless.[47]

2.3.4 Lack of identity proving documents

Through obstacles in the registration, documentation and identification of persons, it can happen that people do not possess a nationality which in theory they have a right to possess. There are roughly three reasons why people cannot prove they have the nationality they possess or which in principle they have a right to possess: no access to the birth registration, destruction of the civil administration, and, finally, doubt about one's identity.[48]

The lack of birth registration forms a stumbling block because it cannot be demonstrated that the child was born in the territory of the State or that it is the child of parents whose nationality is normally passed on through descent.[49] Various obstacles can stand in the way of registration: bureaucratic blockages, living conditions of the parents (long distance to the place of registration, lack of sufficient resources) or simply ignorance on the part of the parents about the importance and necessity of registration. It is estimated that worldwide more than 48 million births annually are not registered.[50]

Even at a later time in life difficulties can arise in proving nationality, for example, when the civil administration of a country is destroyed during a civil war or during the transitional phase to a new State. Slovenia, for example, after withdrawing from the Federal Republic of Yugoslavia 'administratively purified' the Roma population from its civil administration in order to prevent them from receiving Slovenian nationality.[51]

Another reason people encounter difficulties in proving their nationality is that they cannot prove their identity, for example, because they travelled with false documents or their documents were taken and destroyed by human traffickers. In such cases the issue is not denial that a person has the nationality of a given State. The problem is that this person cannot prove that he is who he says he is.

46 N. Gelazis, 'The European Union and the Statelessness problem in the Baltic States', *European Journal of Migration and Law*, 2004, p. 225-242.

47 See N. Gelazis 2004.

48 See H. Massey 2010.

49 See UNHCR *Action to Address Statelessness. A Strategy Note*, Division of International protection, New York: UNHCR, 2010, p. 11.

50 UNICEF, *The 'Rights' Start to Life. A Statistical Analysis of Birth registration*, New York: UNICEF 2005, p. 3.

51 See ECHR 13 July 2010, application no 26828/06, *Case of Kuric and Others v. Slovenia.*

2.3.5 Gender specific causes

Statelessness can also be the consequence of discriminatory legislation which affects women – and their children. When States, in contravention of international conventions which grant women equal rights with reference to the nationality of their children,[52] only allow that nationality to be passed on through the father, then situations can arise in which statelessness threatens the newborn child, for example, when the father is unknown or the child is born illegitimately and the father refuses to recognize it, or when the father himself is stateless, and the mother is not permitted to pass on her nationality to their child. According to Somalian nationality law, for example, mothers are not permitted to pass their nationality on to their children.
Discrimination based on gender can also cause women themselves to become stateless. According to Iranian nationality legislation, for example, the nationality of a woman depends on the nationality of her father or spouse, and the woman loses her dependent nationality if she marries a non-Iranian citizen.
Finally, it is necessary to point out that women more often end up in a vulnerable position in which various causes and factors contributing to statelessness can accumulate. A group, increasingly referred to in recent literature on this topic, are the victims of human trafficking whose documents are destroyed by the traffickers and who as a result encounter difficulties in proving their identity and nationality.[53]

Section 2.4 of the original report 'Stateless persons in the Netherlands' has not been translated.

52 Article 9 section 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1981) specifies that 'States Parties shall grant women equal rights with men to acquire change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband…' Article 9 section 2 prescribes that 'States Parties shall grant women equal rights with men with respect to the nationality of their children.'

53 See D. Weissbrodt & C. Collins, 'The Human Rights of Stateless Persons', *Human Rights Quarterly,* 2006, p. 245-276.

CHAPTER 3

Legal framework

3.1 International legal framework

In this chapter the relevant conventions with regard to combatting statelessness as well as the relevant standards from other sources of law are discussed. Subsequently, section 3.2 indicates how these international conventions and standards have been worked out at the national level, and attention will also be paid to the question of how statelessness is determined in the Netherlands.

3.1.1 International conventions applicable to stateless persons

The objective of the international protection regime with regard to statelessness is twofold. It is aimed at alleviating the *consequences* of statelessness by granting the status of stateless person and the protection resulting from this, as well as the *causes* of statelessness in order to prevent it. This section reflects the legal framework within which the battle against the consequences and causes of statelessness takes place.

The two most important pillars supporting the battle against statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Convention relating to the Status of Stateless Persons (1954)
The 1954 Convention provides for the protection of stateless persons and strives to ensure 'the exercise of fundamental [human] rights and freedoms by stateless persons to the greatest possible extent'.[54] The Netherlands is one of the few countries to have signed the Convention on the date of its creation. In 1962, the Treaty entered into force for the Netherlands.

As mentioned in Chapter 2, the 1954 Convention provides a definition of 'stateless person' in Article 1 (1): 'a person who is not considered as a national by any State under the operation of its law'. This definition refers to the formal absence of nationality. The Dutch translation of this is that a 'stateless person' [is] a 'person who is not regarded by any single State, by virtue of its legislation, as a citizen'. This translation of the definition article deviates to some extent from the original text, because 'under the operation of its law' has been translated as 'by virtue of its legislation'.

Also in the definition article are mentioned categories of persons who are excluded from protection by the 1954 Convention. These exceptions concern the 1954 Convention only and not the 1961 Convention. The grounds for exclusion are discussed in section 5.3.5. of this advisory report.

The provisions in the Convention compare stateless persons either with a State's own

54 Preamble to the 1954 Convention.

subjects or with aliens. Some provisions prescribe that stateless persons be treated in the same manner as the subjects of the State where they are located; other provisions prescribe that stateless persons be treated in the same manner as aliens 'under the same circumstances'. This has to be interpreted as follows: a stateless person should satisfy all requirements for the exercise of a right, including duration and conditions of stay or residence, which he would satisfy if he were not a stateless person, with the exception of those requirements which a stateless person per definition cannot fulfil.[55]In addition, the rights provided by the Convention are linked to various qualifying conditions.[56] The Convention distinguishes between the rights of stateless persons who (1) are subject to the jurisdiction of a State, (2) are located in the territory of a State, (3) are *lawfully present* there, and (4) have a *lawful stay* there.[57]

Following the definition of a stateless person, the 1954 Convention subsequently describes the rights which provide for the specific needs of persons without nationality. In accordance with the core rights which are normally linked to nationality as described in section 2.1, stateless persons are granted the right to identity papers[58] and travel documents[59]. The 1954 Convention also provides that a stateless person should be treated in the same manner while living abroad as the subjects of the State where he habitually resides.[60] If for the exercise of a right under normal circumstances the cooperation of foreign authorities is required, the State where the stateless person is living will provide this cooperation,[61]and stateless persons will be provided with the documents which are normally issued to aliens by their own State.[62] As for rights which specifically address the needs of stateless persons, the 1954 Convention ultimately prescribes that States should facilitate the assimilation and naturalisation of stateless persons.[63] Other rights which derive from the status of stateless person concern social security rights and the right to work,[64] education[65] and freedom of movement.[66]

Convention on the Reduction of Statelessness (1961)
The avoidance of statelessness is a restriction on the sovereign right of States to determine who their citizens are. Even the Preamble to the 1930 *Hague Convention on Certain Questions relating to Conflict of Nationality Laws*, which in Article 1 recognizes

55 Article 6 of the 1954 Convention.

56 This system is the same as the Convention Relating to the Status of Refugees. See Grahl-Madsen, A. (1972), *The Status of Refugees in International Law II. Asylum. Entry and Sojourn*, Leiden: Sijthoff, p. 332-372; J. Hathaway, *The Rights of Refugees under International Law*, New York: Cambridge University Press, 2005, p. 154-160.

57 Neither in the Convention Relating to the Status of Refugees nor in the 1954 Convention are the terms *lawful, lawful presence, lawful stay* and *lawful residence* explained. This must not, however, be understood to mean that States have to define these concepts as in accordance with national law. If States were to be given freedom to define these concepts at their own discretion, then States would be able to choose to deny refugees/stateless persons *lawful presence/stay* at all times, with the result that the rights under both Conventions could not be effectuated under any circumstance and the Conventions would consequently appear to be a dead letter (see L. Slingenberg, *Between Sovereignty and Equality*. The Reception of Asylum Seekers under International Law (PhD VU University), 2012, p. 151). Because the *concepts of lawful presence/stay/residence* have to be interpreted autonomously, that is to say independently of national legislation, these concepts are not translated in this advisory report.

58 Art. 27 of the 1954 Convention.

59 Art. 28 of the 1954 Convention.

60 Art. 16, section 3, of the 1954 Convention.

61 Art. 25, section 1, of the 1954 Convention.

62 Art. 25, section 2, of the 1954 Convention.

63 Art. 32 of the 1954 Convention.

64 Art. 17 of the 1954 Convention.

65 Art. 22 of the 1954 Convention.

66 Art. 26 of the 1954 Convention.

the autonomy of States with regard to nationality matters, expresses the ideal that with reference to nationality the international community should strive to eliminate all cases of statelessness. Article 1 of the Second Protocol to that Hague Convention refers to the avoidance of statelessness: 'In a state, where nationality is not granted as a consequence of the sole fact of birth in its territory, the person, who is born from a mother, who possesses the nationality of that State, and from a father without nationality or of unknown nationality, will possess the nationality of that country'.
The commitment to prevent statelessness is concretely and systematically worked out in the 1961 Convention. This is the primary legal instrument in which measures are laid down in order to avoid future cases of statelessness. The 1961 Convention came into effect in the Netherlands in 1985.

In the discussion of the causes of statelessness in section 2.3 it was pointed out that statelessness can be original, that is to say, occurs at the birth of the child in the absence of its birthright, but can also be non-original, that is to say, occurs at a later time in the course of life through the loss of nationality. Measures to prevent statelessness aim at both forms.

Articles 1 - 4 of the 1961 Convention aim to guarantee that every child receives a nationality at birth. In order to prevent children being born and remaining stateless, the principles of *ius soli* and *ius sanguinis* are combined. States where *ius sanguinis* is the rule grant their nationality *iure soli* if the newborn would otherwise be stateless.[67] Vice versa, States where *ius soli* is the rule grant their nationality to the child born outside their territory from a mother and/or father who possesses the nationality of the State concerned.[68]

Pursuant to Article 1 under a) and b) and Article 4 under a) and b), the 1961 Convention offers two possibilities for States to grant their nationality to stateless children born within their territory, or whose parents possess the nationality of the State concerned: legally at birth, or upon request by, or on behalf of, the interested party.

If a State opts for not automatically granting nationality at birth but granting it at the request of the stateless child or its representative, then the Convention permits States to link the granting of their nationality to certain conditions. These conditions refer to i) setting a time limit and an age limit within which the request should be made, ii) requirements with reference to the length of the time that the applicant must have habitually resided within the territory of a State, which may not exceed the term of five years, iii) requirements with reference to the behavior of the applicant (applicant may not have committed any crimes against national security nor have been given a prison sentence of more than five years), and finally, iv) States may refrain from granting their nationality if the alien in the meantime has acquired another nationality and lost it again.[69]

Articles 5 - 10 of the 1961 Convention couple the loss of nationality with the guarantee that this loss will not result in statelessness. In order to counter the occurrence of statelessness at a later time in the course of life, the Convention prescribes that loss of

67 Art. 1 of the 1961 Convention: 'A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless'.

68 Art. 4 of the1961 Convention: 'A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State'.

69 See art. 1, section 2 (a-2); art. 4, section 2 (a-d) of the 1961 Convention.

nationality through a change in civil status,[70] the dependent loss of a nationality through spouses and/or children,[71] and loss through renunciation[72] shall be subject to gaining a new nationality. The Convention also provides that in the case of transfer of territory, measures must be in force to ensure that one does not become stateless as a consequence of such a transfer.[73]

The Convention does not contain an absolute prohibition against the deprivation of nationality, but only a relative prohibition: States are not permitted to revoke person's nationality if this leads to statelessness.[74] The exception to this provision is that the deprivation of nationality is permitted even if statelessness is the consequence, if the nationality was acquired through misrepresentation or fraud[75] or if residence abroad is involved.[76]

European Convention on Nationality (1997)
The 1997 European Convention on Nationality (ECN) expressly makes the prevention of statelessness a general principle which States must respect when exercising their right to determine for themselves who their subjects are.[77]

Some provisions of the ECN are applicable to combatting both original statelessness and non-original statelessness. With regard to the former, the ECN prescribes that every State should regulate in its national legislation that its nationality can be acquired by children who are born within its territory and possess no other nationality.[78] This can be done automatically at birth or upon request by, or on behalf of, the stateless child.[79] If granting nationality occurs on the basis of a request, the State may impose the requirement of lawful and habitual residence within the territory of the State for a term of no more than five years.[80]

With regard to combatting non-original statelessness, the ECN requires that a State may not provide for the automatic or State-initiated loss of nationality in its national legislation if statelessness is the consequence, unless the nationality of that State was acquired through fraudulent conduct, false information or concealment of a relevant fact.[81]

The ECN is also applicable to existing cases of statelessness. It prescribes that States in their national legislation should facilitate the acquisition of their nationality for stateless persons and recognized refugees who have lawful and habitual residence within their

70 Art. 5 of the 1961 Convention.
71 Art. 6 of the 1961 Convention.
72 Art. 7 of the 1961 Convention.
73 Art. 10 of the 1961 Convention.
74 Art. 8 of the 1961 Convention.
75 Art. 8, section 2 (b) of the 1961 Convention.
76 Art. 8 in connection with art. 7 of the 1961 Convention.
77 Art. 3, section 1 ECN states: 'Each State shall determine under its own law who are its nationals'. Art. 3, section 2 ECN then qualifies this general rule as follows: 'This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality'. In art. 4 section (b) ECN the avoidance of statelessness is indicated as one of the general principles.
78 Art. 6 section 2 ECN.
79 Art. 6 section 2 (a-b) ECN.
80 Art. 6, section 2 (b) ECN.
81 Art. 7 section 1 (b) in conjunction with Art. 7 section 3.

territory.[82]

Convention on the Avoidance of Statelessness in relation to State Succession (2006)
The Convention on the Avoidance of Statelessness in relation to State Succession (CASSS) deserves attention because it is used as an interpretation tool for the 1954 Convention and the 1961 Convention. CASSS contains an important provision about easing the burden of proof. It also defines important concepts, such as 'habitual residence' which is further discussed in sections 3.2.3 and 5.2.1.
Within the specific context of State succession, CASSS permits the right to a nationality to be made a reality by the predecessor State and/or to make the successor State responsible for its granting.[83] The successor State is responsible for granting its nationality to persons who have their habitual residence in the territory of the newly formed State[84] or who have an adequate bond with the new State.[85] The responsibility of the predecessor State to prevent statelessness consists of not depriving its subjects of their nationality if they have not acquired their new nationality from the successor State.[86] Regardless of the question of which State is responsible, CASSS, moreover, gives priority to the wish of the person involved: if a person expresses the wish to acquire a certain nationality then this may not be refused by the successor State despite the existence of an appropriate connection with the other State involved.[87] CASSS also stipulates that the States concerned should facilitate the acquisition of their nationality if someone, despite the earlier guarantee of retaining or acquiring a nationality, has become and remained stateless.[88]

In contrast to other conventions on statelessness, CASSS explicitly addresses the proof which may be required of stateless persons who are applying for the new nationality of the successor State. CASSS stipulates that standard rules for granting nationality should not be applied if the persons concerned cannot reasonably be expected to be able to meet the standard requirements.[89] Nor may persons who are stateless, or who are liable to become so, be required to prove that they have not acquired another nationality.[90] CASSS also enumerates the procedural guarantees which States must provide in the context of granting nationality: the application for citizenship should be processed within a reasonable time,[91] decisions must state the reasons,[92] and the fees should not be prohibitive for the applicants.[93]

82 Art. 6, section 4, under g) ECN.
83 Art. 2 CASSS: 'Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.'
84 Art. 5, section 1 a CASSS.
85 Art. 5, section 1 b CASSS.
86 Art. 6 CASSS.
87 Art. 7 CASSS.
88 Art. 9 CASSS.
89 Art. 8, section 1 CASSS.
90 Art. 8, section 2 CASSS.
91 Art. 12, a) CASSS.
92 Art. 12, b) CASSS.
93 Art. 12, c) CASSS.

3.1.2 Other international standards applicable to stateless persons

Combatting statelessness is also covered by a number of other conventions.[94] The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also extends to combatting original and non-original statelessness resulting from gender-discrimination. It recognizes that women have an independent nationality right, so that women do not lose their nationality and become stateless through marriage, or through a change in the status of their spouse.[95] The treaty also gives women equal rights with regard to the nationality of their children.[96] In 1991 this Convention came into operation in the Netherlands.

The pursuit of avoiding original statelessness is also expressed in the 1989 International Convention on the Rights of the Child (ICRC). This Convention, which came into operation in the Netherlands in 1995, lays down the right of every child to birth registration, to have a name and to acquire a nationality,[97] and it emphasizes that States should guarantee these rights in their national legislation particularly when the child would otherwise be stateless.[98] The principle of non-discrimination means that with regard to guaranteeing the fundamental rights included in the Convention, no distinction may be made based on the status and circumstances of the parents of the child.[99] The general principle that the interests of the child ought to be the first consideration also applies in relation to the right to a nationality at birth. [100]

Finally, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is of interest. The ECHR contains no provisions which explicitly refer to statelessness, however. Nor does it contain a right to nationality – in contrast to, for example, the American Convention on Human Rights.[101]
From the case law of the European Court of Human Rights (ECtHR), it does appear that in specific cases the failure to grant a nationality,[102] or the denial of a right of residence to stateless persons, can be in conflict with the ECHR.[103] Article 8 ECHR is of particular relevance here.[104] Article 8 section 1 ECHR provides that everyone has a right to have his private and family life respected. According to Article 8 section 2, '[T] here shall be no interference by a public authority with the exercise of this right except

94 In the past, two other conventions were of interest: the 1957 Convention on the Nationality of Married Women and the 1973 Berne Convention for Limiting the Number of Cases of Statelessness. Both conventions, however, were no longer relevanct because of developments in international law and were, therefore, cancelled in 1993 and 2001 respectively. See De Groot, G.R & M. Tratnik, Nederlands nationaliteitsrecht. Deventer: Kluwer, 2010, p. 12 and 14.

95 Art. 9, section 1 CEDAW.

96 Art. 9, section 2 CEDAW.

97 Art. 7, section 1 ICRC.

98 Art. 7. section 2 ICRC.

99 Art. 2 ICRC.

100 ICRC, Art. 3.

101 See Art. 20 American Convention on Human Rights.

102 See, for example, ECHR 11 October 2011, case 53124/09 (Genovese v. Malta). See in general sense also L. van Waas, 'Fighting Statelessness and Discriminatory Nationality Laws in Europe', European Journal of Migration Law 2012, p. 251.

103 See inter alia ECHR 9 October 2003, case 48321/99 (Slivenko v. Latvia, Application No.48321/99); ECHR Grand Chamber 15 January 2007, case 60654/00 (Sisojeva & Others v. Latvia); ECHR 13 July 2010, case 26828/06 (Kuric and Others v. Slovenia); ECHR Grand Chamber 15 January 2007, case 60654/00 (Sisojeva & Others v. Latvia); ECHR Grand Chamber 26 June 2012, case 26828/06 (Kuric and Others v. Slovenia).

104 The relevance of Art. 8 ECHR to issues of nationality and statelessness is also recognized in the Preamble to the ECN in which the value of respect for private and family life is explicitly endorsed. See also D. Thym 'Respect for Private Life and Family Life under Article 8 ECHR in Immigration Cases', International Comparative Law Quarterly 2008(75), p.87-112; A. Kesby The Right to Have Rights, Oxford: Oxford University Press: 2012, p. 27.

such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.

The occurrence of statelessness accompanying the collapse of the Soviet Union and later the Federal Republic of Yugoslavia has ensured that since the turn of the century the ECtHR has considered with some regularity possible breaches of the ECHR as a consequence of the loss of nationality and/or the right of residence. In a number of cases, the ECtHR ruled that granting or denying residence pursuant to national immigration laws and denying a particular nationality conflicted with Article 8 ECHR, because of the serious consequences which this can have for the exercise of one's private life.[105] Noteworthy is that all of the cases in which the ECtHR found a breach of Article 8 ECHR were referred to the Grand Chamber of the ECtHR,[106] which, by virtue of Article 44 ECHR, ought to happen only by way of exception, and then only when 'a case provides grounds for a serious question concerning the interpretation or application of the Convention . . . or for a serious issue of general interest'. Each referral took place at the request of the State, which argued that the ECtHR was not competent to judge cases related to the (non) granting of nationality or residence since such issues are national matters and fall under the sovereign right of States. The Grand Chamber, however, affirmed the judgments of the Court that Article 8 ECHR was breached. This means that statelessness raises not only the right to nationality or residence, but also other fundamental human rights[107], such as the right to protection of private and family life.

3.1.3 UNHCR and the Guidelines on Statelessness

Article 11 of the 1961 Convention provides that within the framework of the United Nations a body is to be appointed for monitoring compliance and implementation of the Convention. Since shortly after the entry into force of the 1961 Convention, the UNHCR has fulfilled this role at the request of the United Nations (UN). Since 1994, the UNHCR also has the formal mandate of the UN to prevent and reduce statelessness, and to protect the rights of stateless persons.

The increasing attention focused on the 1954 Convention and the 1961 Convention leads to a multiplicity of questions about the interpretation and application of the Conventions. For the sake of consistent interpretation, the UNHCR has developed a number of Guidelines, which were published in 2012. These Guidelines provide interpretation of provisions of the 1954 Convention and the 1961 Convention in the light of developments in the area of human rights, for example, taking into account Article 7 of the ICRC or inspired by CASSS with regard to burden of proof. These Guidelines are not binding but they are authoritative.

105 ECHR 9 October 2003, case 48321/99 (Slivenko v. Latvia, Application No.48321/99); ECHR Grand Chamber 26 June 2012, case 26828/06 (Kuric and Others v. Slovenia).

106 Idem.

107 See Goodwin-Gill, 'The Rights of Refugees and Stateless Persons' in K.P. Saksena (ed.) Human Rights Perspectives & Challenges. New Dehli, Lancer Books , 1994, p. 392; Thym (2008), p. 96; L. van Waas 2008, p. 254.

To date, four Guidelines have been issued[108] about the definition of statelessness,[109] procedures for determining statelessness,[110] the status of stateless persons,[111] and the prevention of original statelessness among children.[112]

3.2 National legislation about statelessness

This section discusses how the relevant international conventions and standards applicable to statelessness have been worked out in Dutch legislation.

In order to lay claim to the rights in the 1954 Convention and/or the 1961 Convention, it must first be established that a person is stateless as defined in the Conventions. The 1954 Convention is silent, however, on the question of how statelessness should be established. Because the manner of determination has apparently been left to the Contracting Parties to this Convention, this section first discusses whether statelessness is determined in the Netherlands and, if so, how.

In 2007, the Dutch Government proposed that it is a task of the Immigration and Naturalisation Service (INS) to determine on the basis of the Aliens Act whether in a given case statelessness is involved.[113] It pointed out that the 1954 Convention does not prescribe how statelessness should be determined. The State Secretary of Justice then proposed that this is done in the Netherlands by assessing the question whether an alien is stateless in the context of handling an application for a residence permit.

In 2012, however, the Dutch government took the view that the assessment of whether an alien can be regarded as stateless should be made on the basis of registration in the GBA.[114] This position can also be found in the Guide to the Netherlands Nationality Act (GNNA), which states that in order to determine whether a person is stateless within the meaning of the Netherlands Nationality Act (NNA), reference should be made to registration in the GBA.[115] The definition of a stateless person is included in Article 1 under f) NNA. A stateless person within the meaning of the NNA is 'a person who is not regarded by any State, by virtue of its legislation, as a citizen'.
The Municipal Personal Records Act will shortly be replaced by the Basic Registration of Persons Act (BRP).[116] The current situation is such that when applying the provisions of the NNA that specifically address stateless persons (see section 3.2.3.), registration in the GBA as 'stateless' is required. This rule will not change with the introduction of the BRP. The requirements specified for the registration of a foreign nationality in the BRP, however, will change. For stateless persons known to the INS as 'stateless', and who may soon register themselves in the BRP, the new law will have positive consequences

108 Currently, a Guideline is being developed about the loss of nationality in relation to statelessness. It is anticipated that this Guideline will be published at the beginning of 2014.

109 Guideline No.1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons 2012, HCR/GS/12/01.

110 Guideline No. 2: Procedures for Determining whether an Individual is a Stateless Person 2012 HCR/GS/12/02.

111 Guideline No. 3: The Status of Stateless Persons at the National Level 2012 HCR/GS/12/03.

112 Guideline No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness HCR/GS/12/03.

113 National Ombudsman Report 2007/328, 28 December 2007.

114 Policy response to UNHCR report: Statelessness in the Netherlands, 20 August 2012.

115 Article 1, section 1(f) IPM (1-4-2013).

116 On 26 July 2013 the Basic Registration of Persons Act (BRP) was published in the Government Gazette. The date of its entry into force will be specified by Royal Decree.

compared to the current situation. In order to explain this change further, the regulations for registering statelessness in the GBA and BRP are described in greater detail below.

3.2.1 Regulations for registering statelessness in the GBA and the BRP

The GBA contains the personal details of everyone who lives, or has lived, lawfully in the Netherlands. The municipality collects, registers and maintains the data in the GBA. A personal profile is drawn up of every person including the following data: name, address, nationality, marital status, parents and children. The government uses this data inter alia to prepare such documents as passports, to determine who is eligible to vote and to provide benefits payments.
What is of primary importance is that registration in the GBA is only possible for aliens who are lawfully present as required in Article 8 Aliens Act 2000[117], and who reasonably expect to reside in the Netherlands for at least four months during a six month period.[118] Aliens not lawfully present in the Netherlands, therefore, cannot register in the GBA. Article 43 of the GBA Act specifies how a foreign nationality is to be registered in the GBA. The registration takes place if the alien shows an administrative decision or judicial order from his national authorities, which is proof of his nationality, or if he produces a valid national passport, or on the basis of applying foreign nationality law. Section 3 Article 43 requires that, if the alien possesses no nationality or if his nationality is unknown, this information be included in the records database.

The GBA Act assumes a closed system of source documents from which data may be derived. Data may only be derived from the sources listed in the Act. Although Article 36, section 2e of the GBA Act specifies that data about one's civil status outside the Netherlands can still be registered following a declaration under oath despite the lack of documents, the declaration under oath is not mentioned in Article 43 of the GBA Act., A declaration under oath cannot, therefore, serve as a source to register a foreign nationality in the GBA.
The Implementation Procedures Manual (IPM) to the GBA elaborates on this. If an alien cannot produce the required source documents, and in applying foreign nationality law the GBA official cannot establish which nationality the alien has, the alien is to be registered as 'of unknown nationality'.[119]

Article 1.7 of the BRP Act contains the same wording as Article 43 of the GBA Act.
The system of proof employed to register foreign nationality can be found in identical wording in Article 2.15. Article 2.17 is new and provides:

> 'When registering an alien on the basis of Article 2.4, details with regard to the date of birth and nationality which cannot be included pursuant to Articles 2.8 and 2.15, are to be derived from a communication from Our Minister of Security and Justice concerning same, to the extent that these details have been established by him within the context of the admission of the person concerned to the Netherlands.'

The introduction of this Act means that for aliens who cannot prove their nationality and who are being registered in the BRP for the first time, an examination will be made of the

117 This concerns aliens who have a residence permit but also aliens who do not have a residence permit but are lawfully present, for example, because they are awaiting the outcome of a procedure in the Netherlands or because they are citizens of the EU. For a complete list of the grounds for lawful presence, see Article 8 Aliens Act 2000.

118 Art. 26 GBA Act.

119 The precursor of the GBA, the Population Registration Decree, did not contain the requirement that nationality be provened with documents.

nationality which the INS presumes on the basis of known facts and circumstances used in an immigration law procedure. Undocumented aliens, presumed by the INS to qualify as stateless, can, after the introduction of the BRP Act therefore be registered as such, unlike the current situation.

According to the advisory reports of the Dutch Association for Civil Affairs (NVvB)[120], the same regulations ought to be applied for registering stateless persons in the GBA as for registering a foreign nationality. This means that the rule is that, if a supposed stateless person cannot provide any source documents and the officer of the GBA cannot conclude on the basis of applying foreign nationality law that the alien is stateless, the alien is to be registered in the GBA as 'of unknown nationality'.
Given the nature of the problem, it is not self-evident that the same burden of proof as described in the Act for proving a foreign nationality should also be applied to proving statelessness. After all, what is required of the alien is to demonstrate something that is not there, which is substantially different from something that is there. The current practice does not necessarily follow from the GBA Act. Article 43 sections 1 and 2 of the GBA Act only refers to the data necessary for registering a foreign nationality, and not for registering the lack of a nationality. Section 3 subsequently specifies that if the person concerned does not possess any nationality or a nationality cannot be established, that this detail be included. No sources are cited here which are necessary for this inclusion.[121] Nor does the IPM GBA specify that registering statelessness can be based only on the data included in Article 43 sections 1 and 2 of the GBA Act. For registering a foreign nationality this is expressly included in the user manual.

Article 43 section 1 of the GBA Act also indicates that a nationality can be registered in the GBA on the basis of applying foreign nationality law. From interviews held by the Advisory Committee with municipal officers, it emerges that this procedure is applied in particular to determine statelessness in the case of children born in the Netherlands. Here it is not necessary to prove directly that the child is stateless, but proof should be provided, for example, of the nationality of the parents, so that the municipal officer can apply the correct nationality law. The examples which were cited were children of Somali mothers where the father was unknown, and children of Portuguese and Cape Verde parents who were not yet registered with the national authorities (a requirement for acquiring citizenship in these countries). One of the officers interviewed indicated that foreign nationality law has not been applied to establish whether an alien not born in the Netherlands is stateless.

One of the respondents from the municipalities pointed out that the requirements specified in the GBA for registering stateless persons cannot always be executed and do not always lead to the correct outcome. The Palestinians serve as an example here for it is known that they are often stateless, but the regulations for registering statelessness in the GBA do not lead to this conclusion.
From the interviews held by the ACVZ it is evident that municipal officers have the impression that municipalities vary in the way they register stateless persons in the GBA. They admit that it is possible for one municipality to be more lenient with regard to the burden of proof than another, and that in individual cases it can happen that

120 GBA officers can direct their questions to the Dutch Association for Civil Affairs (NVvB), which remunerates advisors employed by the Municipality of Amsterdam.

121 If the rules reflected in sections 1 and 2, were to apply also to section 3, then that would also have to apply to registering the unknown nationality, which in section 3 is referred to in the same breath as the non-possession of a nationality.

municipalities deviate from the regulations if they appear unreasonable. This picture was confirmed in the meeting of experts the Committee held for this advisory report. On the other hand, it was reported that many municipal officers shy away from registering someone as 'stateless' in the GBA because of a lack of familiarity with the nationality legislation of various countries. Where there are no source documents they would readily opt for registering someone as 'of unknown nationality'. This practice would be reinforced by the IPM GBA which states several times that 'this situation (statelessness) rarely occurs in practice'. The municipal officers interviewed indicate that the necessary knowledge about nationality issues is often inadequately present. This applies particularly to smaller municipalities. Until now, there has been a lack of general policy rules or national guidelines for dealing with statelessness in certain specific situations (such as the collapse of Yugoslavia) where every municipality has to find its own way through this complex matter.

A consequence of this legislation in the Netherlands is that a sizable group of aliens is registered in the GBA as 'of unknown nationality'. The introduction of the BRP Act will reduce this problem to some extent. The new Article 2.17 can, however, only be applied at the initial registration, so that it does not provide a solution to the situation in which an alien is already registered in the BRP and a nationality ceases to exist. Something else the BRP Act will not change is the fact that the government is not bound to carry out any further research when registering 'unknown nationality'. A recent judicial decision about the GBA confirmed that the government is not required to conduct further research:

'The Court considers from a reading of Article 43 of the GBA Act, in conjunction with Articles 69 - 71 of the GBA Act, that is up to the plaintiff to provide proof on the basis of which registration in the GBA can be adjusted. That the plaintiff, given the circumstances he has referred to, cannot fulfil the obligation, is a circumstance that comes at his expense and risk. Given the formulation of Article 43 of the GBA Act, the respondent is not bound to carry out further research into the nationality of the plaintiff, not even if it must be assumed that the plaintiff in that regard lacks any proof of identity. In short, it is up to the plaintiff to produce documents or details as intended in Article 43, first and/or second section, of the GBA Act.'[122]

Use of data about nationality from the BRP (GBA) by governing bodies
On 1 April 2007 the GBA Act was amended with the objective of requiring governing bodies to make use of the personal details registered in the GBA.[123] The rationale behind this was that this would improve the reliability of personal details, that administrative burdens would be reduced, and that citizens would no longer have to provide personal details anew to every governing body.[124] To this end, Article 3b was added to the GBA Act, which can be found in identical wording in Article 1.7, section 1 of the BRP Act:

> 'The user who in executing his task requires information about a registered person which is available in the form of an authentic piece of information in the records database, uses that information for that administration.'

The second section of Article 1.7 of the BRP Act (Article 3b of the GBA Act), however, contains a number of exceptions to the compulsory use of data from the GBA. In the following situations the data are not required to be used:

122 Court, Utrecht 19 February 2013, SBR 12/3509.
123 Stb.2007,76.
124 Kamerstukken II 2005/06, 30 514 no.3.

- if they are under investigation because there is doubt about their correctness
- if the user provides feedback to the GBA because of other data at his disposal
- if the user is tasked with implementing sectoral legislation which prescribes that data should not be derived from the BRP
- if use of the data from the BRP would prevent proper performance of the user's task .

The second section embodies the position of the BRP/GBA as a registration system. In principle, it should be the starting point, but there can be all sorts of reasons for a governing body to choose to deviate from it. Therefore no rights flow from registration in the BRP/GBA, precisely because it is only a registration system.
In current practice, governing bodies in the execution of their work regularly make use of the opportunity to deviate from the manner in which the nationality of an alien has been registered in the GBA.
In the implementation rules of the Passport Act, for example, it is stated that the governing body can deviate from the nationality details in the GBA in certain cases. If there is doubt about the details registered in the GBA, a focused investigation must be initiated whereby information about the right of residence and nationality as well as the statelessness of the applicant contained in the alien administration records is also considered.[125] In practice, the municipalities use the 'presumed nationality' of the alien when issuing refugee passports to persons who are registered in the GBA as 'of unknown nationality'. On the website of the NVvB, the frequently asked questions include:[126]

> Normally speaking, the refugee passport includes an exclusion clause. What if the person concerned happens to be of unknown nationality (like most refugees)? Will it then contain no such clause so that the person concerned can travel to all countries, including the country from which he has fled?

The answer:

> If the nationality is unknown in the GBA you may record the presumed nationality. For example, should the person concerned be a refugee from Iraq, then you would be allowed to record Iraq in the clause. Perhaps there is evidence of a nationality in the residence document. You are advised to base the clause on that. If you are completely unable to establish a presumed nationality, then don't put a clause in the passport.

In the treatment of asylum seekers, the INS uses the same procedure. When assessing an asylum application, the INS officer tries to ascertain where the asylum seeker comes from through an identity investigation conducted by the Aliens Police and by questioning the asylum seeker about his origin. The outcome of this investigation subsequently determines the country of origin upon which the asylum application will be tested. Mention of another nationality in the GBA will not change this.[127]

Use of data from the GBA within the context of applying the Netherlands Nationality Act
In a number of cases, therefore, governing bodies employ the presumed nationality with aliens who are registered in the GBA as 'of unknown nationality'. The second section of article 3b of the GBA Act provides opportunities for this.
When implementing the NNA, however, this line of reasoning is not to be found. In

125 Art. 11, section 3 Passport Implementation Regulation The Netherlands 2001.
126 NVVB <http://www.nvvb.nl/advisory reportbureau-nvvb/veel-gestelde-vragen> (02-07-2013).
127 Vc 2000 C1.3 (02-07-2013).

the GNNA one reads that in order to determine whether a person is stateless within the meaning of the NNA one looks at the registration in the GBA. Here it is pointed out that a consistent definition of the concept of 'stateless person' is of importance in connection with the application of Article 6, first section, Introduction and under b, NNA, Article 8, fourth section, NNA and Article 14, fourth section, NNA.[128]
In this way, the GNNA lays the responsibility for the 'determination' of statelessness with the GBA, while the GBA is merely a registration system and a governing body can have valid reasons for deviating from the registration in the GBA. What is now actually happening is that in the execution of the NNA, the governing bodies charged with this are not making an independent assessment about an aspect which is of great importance for the conditions for naturalisation, namely the question of whether the alien concerned should be classified as stateless. This together with the fact that the burden of proof for the registration of statelessness in the GBA is the same as for registering nationality can have far-reaching consequences.
It is not clear to the Committee why there is no deviation from the GBA when applying the NNA, while this does happen in other cases. In a number of other cases , the presumed nationality or the presumed statelessness of the alien has been the starting point when applying the law and regulations, while this option has not been chosen when applying the NNA. If this would be done in the case of presumed statelessness, for example, the passport requirement for naturalisation could be dropped and presumed stateless children born in the Netherlands would be able to appeal to the option right under Article 6 of the NNA.

The BRP Act, once it has entered into force, will on the basis of Article 2.17 for newly registered persons make it possible to use the nationality recorded by the INS (the presumed nationality) when registering the foreign nationality. This means that if the alien is recorded by the INS as stateless, the alien can be registered as such and the passport requirement for naturalisation would lapse.
Article 2.17 of the BRP Act operates, however, only for the first registration of aliens who have been through a permanent residency procedure in the BRP and furthermore, does not provide a retroactive correction for aliens who are already registered.[129] On 1 January 2012 more than 5,500 children born in the Netherlands had been registered in the GBA for more than 5 years as 'of unknown nationality'. In addition, there were nearly 30,000 migrants who six years after their settlement in the Netherlands were also registered as such. There is no doubt that stateless persons are included in these figures, although it is unknown how many. The introduction of the BRP Act will not provide a solution for these persons.

3.2.2 Law relating to aliens and the no-fault procedure

No legislative provisions are included in the Aliens Act 2000 aiming to protect stateless persons (in conformity with the 1954 Convention) and to prevent and reduce

128 Article 1, section 1(f) IPM p.4 (1-4-2013).
129 Written information from the Ministry of the Interior and Kingdom Relations.

statelessness (in conformity with the 1961 Convention).[130] The NNA, the Civil Code (CC) and the Passport Act do contain such provisions. This reflects both the nationality and the civil law nature of statelessness.
The fact that statelessness is a nationality law issue does not mean that stateless persons, who do not have a residence permit in the country where they are located, cannot encounter serious problems. If, in addition, it is not possible for the stateless person to travel to a country where he does have a right of residence, a legal vacuum results. In order to deal with the permanent residency problems closely connected with this nationality law issue, the Netherlands created a new type of residence permit in 2000, with the title 'residence as an alien who through no fault of his own cannot leave the Netherlands'.[131] The Interim Supplement to the Aliens Act Implementation Guidelines (ISAAIG)which introduced this policy indicated that the policy applies only to stateless persons, because the basic principle of the return policy was that all aliens who have a nationality can return to their country of origin. The ISAAIG was a further development of the coalition agreement of the Kok Cabinet II, which provided that aliens, who through no fault of their own could not leave the Netherlands, would remain in shelter and would become eligible for a temporary residence status.

In 2005, the requirement that the alien needed to be stateless in order to become eligible for a no-fault permit lapsed.[132] As a consequence, aliens who do have a nationality, but through no fault of their own cannot return to their country of origin, can also become eligible for a residence permit on the basis of the no-fault policy. The Committee has referred to this group as *de facto* stateless persons (Section 2.2).
Both stateless persons and persons who are *de facto* stateless can in this way appeal to the no-fault policy. For the eligibility test for a no-fault permit, the question whether the person at issue is stateless no longer matters, and this is, therefore, not assessed in a no-fault procedure. The Committee has recently issued an extensive advisory report about the no-fault policy. From the research conducted for this advisory report, it is also evident that the question of whether the applicant is stateless no longer played any meaningful role in the assessment of eligibility for the no-fault permit.[133] This finding has been confirmed by research performed at more or less the same time by Tilburg University.[134]

3.2.3 The Netherlands Nationality Act

Nationality law holds the key to the solution of the current problem of statelessness and is, therefore, of essential importance. It can offer a stateless person a definitive solution to statelessness by enabling acquisition of a nationality. Statelessness can also be prevented by nationality legislation which aims to guarantee that children do not arrive stateless

130 Until April 2013, the Aliens Circular published a section about the 1954 Convention, under the chapter heading: 'International Conventions'. This section dealt particularly with special rules concerning the treatment of renewal requests from stateless permit holders and concerning the ban on the expulsion of lawfully residing stateless persons. This was a translation into policy regulations of Article 31 of the 1954 Convention (see Section 3.1). This chapter also stated that a travel document for aliens may be issued to aliens who are registered as 'stateless' in the Aliens Administration. This chapter was scrapped in April 2013, because the ban on the expulsion of lawfully residing stateless persons had already been guaranteed by national law, now that lawful residence in a general sense already stands as an obstacle in the way of removal. WBV 2013/5.

131 ISAAIG 2000/29, 20 December 2000.

132 WBV 2005/11, 15 March 2005.

133 ACVZ, Where there is a will, but no way. Advisory report about the application of the policy for aliens who through no fault of their own cannot leave the Netherlands independently. The Hague: ACVZ, 2013.

134 S. Jaghai and C. Vlieks, 'No-fault policy falls short in the protection of stateless persons', A&MR 2013, p.287-292.

into the world, and by legislation which rules out loss of a nationality if statelessness would be the consequence.
The NNA contains a number of provisions which specifically address stateless persons and which objective is to reduce or prevent statelessness. These provisions are discussed in this section.

Provisions about accelerated naturalisation of stateless persons
The 1954 Convention specifies that States should facilitate the assimilation and naturalisation of stateless persons.[135] In the Netherlands, several legislative measures bring this into effect.
The NNA stipulates that stateless persons who have been admitted into the Netherlands and who have their principal residence here may naturalize after three, instead of after the usual five years, provided other conditions have been met.[136]
Stateless persons are eligible for a reduced fee at naturalisation.[137] The GNNA clarifies that stateless persons are logically exempt from the renunciation requirement for naturalisation[138] and are also exempt from the passport requirement.[139]
Although the GNNA explicitly designates stateless persons as a category which is excluded from the passport requirement, the GNNA stipulates that with regard to a birth certificate exemption can be granted only if there is a question of lack of proof of identity.[140] The GNNA clarifies that there will be an issue of lack of proof of identity particularly if the civil registers of the country of origin do not exist or are incomplete, or when the political situation in the country of origin prevents relevant documents from being acquired. Statelessness is not classified as an independent ground, or indication, of lack of proof of identity.
A decision by the Administrative Law Division of the Council of State of 14 November 2012 reaffirms that statelessness is not an independent ground for accepting lack of proof of identity.[141] In this matter, the Administrative Law Division declared the appeal of the alien against the refusal of naturalisation unfounded. Naturalisation was refused to the alien – an ex-asylum seeker who had received a regular residence permit – because the identity of the alien had not been established. The Administrative Law Division held that the appeal to lack of proof of identity failed, because the alien had no way of substantiating his identity with documentary evidence. It is striking that the judgment reports that it was not in dispute that the appellant had not provided a legalized birth certificate with his request for Dutch citizenship. Also not in dispute was that the appellant is stateless and in possession of a regular residence permit.
The Administrative Law Division thus accepted that the alien is stateless, but made clear that statelessness is insufficient for concluding that the person concerned lacks proof of identity. The appeal to Article 32 of the 1954 Convention was also rejected because this article, 'given its formulation, is not a norm which can be applied directly by the Court without further development in national law and regulation'.

Section 3.2 already dealt with the role of registration in the GBA when applying the NNA. The provisions of the NNA, which address the protection of stateless persons and reducing statelessness, are applicable only to aliens who have succeeded in getting

135 Art.32 1954 Convention.
136 Art. 8 section 4 NNA.
137 Art. 3, section 2 Acquisition of Nationality by Option or Naturalisation (Fees) Decree 2002.
138 Art. 6a, section 1 IPM. Clarification of article 6a, first section, p. 140.
139 IPM section 2.2.5.1.
140 IPM section 2.2.5.6.
141 ALDCS 14 November 2012, 201203838/1, LJN BY3058.

themselves registered as 'stateless persons' in the GBA.[142]

Stateless children born in this country
As was pointed out during the discussion of the causes of statelessness in the previous chapter, statelessness can be original, that is to say that it occurs at the birth of the child. The 1961 Convention lays down regulations which aim to prevent and reduce this original statelessness.

In harmony with the obligation under the Convention to reduce the number of cases of statelessness, Dutch nationality law provides a right of option for Dutch citizenship for stateless children born in this country. Article 6 section 1b of the NNA specifies that a right of option is available if the alien during an 'uninterrupted period of at least three years has admission and principal residence and has been stateless from birth.' 'Admission' into the Netherlands under the NNA means the alien has lawful residence based on Article 8, Introduction, and (a) – (e), as well as (l), of the Aliens Act 2000.[143] The NNA, therefore, aims to counter original statelessness by a right of option granting children born in the Netherlands and who are stateless, but restricts this right to children of aliens who have a residence permit. Children born in the Netherlands and who are stateless but whose parents do not have a residence permit are thus excluded from the possibility of obtaining Dutch citizenship.

The question that arises is whether restricting the right of option to admitted aliens thwarts the objective of avoiding original statelessness to which the Netherlands committed itself with the ratification of the 1961 Convention. Since the conditions which States may impose on the alien for the acquisition of nationality are listed exhaustively in the 1961 Convention,[144] the question is whether the requirement for admission (NNA) is compatible with the 1961 Convention. The English text of Article 1, second section, Introduction, and (b), of the 1961 Convention reads as follows:

> ' A Contracting State may make the grant of its nationality in accordance with the provisions of section 1 of this Article subject to one or more of the following conditions: (...)
> (b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all.'

142 Art. 1, section 1(f) IPM (01-04-2013).

143 Art. 8 Aliens Act 2000
The alien has lawful residence in the Netherlands only:
a. on the basis of a residence permit for a definite period as specified in article 14 (regular residence permit for definite period);
b. on the basis of a residence permit for an indefinite period as specified in article 20 (regular residence permit for indefinite period);
c. on the basis of a residence permit for a definite period as specified in article 28 (asylum residence permit for a definite period);
d. on the basis of a residence permit for an indefinite period as specified in article 33 (asylum residence permit for indefinite period);
e. as Community national so long as this national has residence on the basis of a regulation under the Treaty establishing the European Community as well as the Agreement on the European Economic Area; (...)
l. if the alien derives his right of residence from Association Decision 1/80 by the Association Council EEG/Turkey.

144 See UNHCR, 'Summary Conclusions Expert Meeting' in Interpreting the 1961 Statelessness Convention and Preventing Statelessness Among Children, Dakar: UNHCR 2011, p. 8: 'The exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention.'

The question is thus how to define the term 'habitual residence'. This question was at the heart of an option case in Zwolle in 2010.[145] In that matter the parents of a stateless child born in the Netherlands appealed against the refusal of the Mayor of Zwolle to confirm the acquisition by their son of Dutch citizenship by option. The parents of the child were stateless Palestinians originally from Lebanon. The statelessness of the child was, therefore, not in question. What was in dispute was whether the requirement for admission was in conflict with the 1961 Convention, as the plaintiffs claimed. The defence of the municipality of Zwolle – prepared by the Legal Representative on behalf of the State - was twofold. In the first place, the respondent argued that Article 1 section 1 of the 1961 Convention was clear and concrete, but that the second section of the same Article, in which States are given the possibility of requiring the habitual residence of the applicants, had not been formulated with sufficient clarity and concreteness to have direct effect in the national legal system. The requirement for admission as laid down in the NNA, therefore, cannot be in conflict with the condition of habitual residence because the 1961 Convention does not define the term habitual residence, and consequently States have to define that term for themselves. In the second place, the municipality argued that the requirement for admission not only was not in conflict with the 1961 Convention, but that the concept 'habitual residence' should be understood as residence approved by the competent authority. Because the parents of the child at the time of the option request were anticipating a decision about an asylum application, their residence could be terminated at any moment, and there was, therefore, no question of a habitual residence in the Netherlands, according to the municipality.
The Court rejected the defence on both counts. According to the Court, Article 1 of the 1961 Convention is clearly and sufficiently formulated to have direct effect in the national legal system and should, therefore, be understood as any binding provision of international law pursuant to Article 94 of the Constitution. The Court also ruled that the term habitual residence does not mean approval by the competent authority but expresses the fact that someone is living permanently in the Netherlands and has built up a social life in this country.
On advice of the INS, the municipality of Zwolle decided to appeal the decision to a higher court because the decision created the undesirable situation that the parents of the child could force a right of residence by appealing to Article 8 ECHR (respect for family life), which was especially important since the parents were engaged in a 1F procedure.[146] Ultimately, the appeal was withdrawn because, after a procedure lasting nine years, asylum was finally granted to the parents of the child.

The old NNA of 1985 gave substance to the international legal obligation to avoid original statelessness by granting a right of option to stateless aliens born in the Netherlands who had had their domicile or actual residence in this country for three years. The reason for amending the NNA in 2003 by introducing the admission and principal residence requirement was not to give real substance to and clarify the open condition of habitual residence, which according to the defence of the municipality in the abovementioned case was unclear, but in order to bring nationality law and immigration policy in line with each other. Nationality law would undermine immigration policy if aliens, who have no lawful residence in the Netherlands, would be able to build up rights within the framework of nationality law. The Explanatory Memorandum to this proposed amendment to the NNA states:

145 Court Zwolle-Lelystad 09-09-2010, awb 09/2212.

146 G. Reijgersberg, 'Is toelatingseis voor staatloze optant in strijd met Staatloosheidsverdrag?' [Is the admission requirement for a stateless optant in conflict with the Statelessness Convention?], B&R 2010, p. 351.

> 'The principle of the integrated immigration policy brings with it, that a person who may not be here legally, also should not be able to build up rights under the nationality law. The current Netherlands Nationality Act provides that an alien who opts for Dutch citizenship or who applies for naturalisation after having a domicile or factual residence for a number of years, will obtain Dutch citizenship provided the other requirements are met (...). The question of whether this person has been admitted to the Netherlands by the Dutch Government plays no role in this. The alien, in other words, can have been unlawfully present in the Netherlands –within the meaning of the Aliens Act – for a part of the domicile or residence period required by the Nationality Act. This loophole is closed in the current proposal. Within the framework of the integrated immigration policy, the Nationality Act will prescribe that the terms of residence in the Netherlands referred to in the Act first begin after the alien has been admitted by the government, that is to say, after the competent authority has agreed to the alien's permanent residence in this country.'[147]

The Explanatory Memorandum makes clear which categories of person are no longer eligible for Dutch citizenship after the amendment of the NNA. This concerns 'the illegal resident, the persons about whom a residence procedure is in progress, people who cannot be removed and people who have been turned a blind eye'. It is striking that stateless persons are not referred to as a separate category, although the addition of the admission and principal residence requirement affects precisely children who are born stateless in Dutch territory.

Lose/withdraw/renounce Dutch nationality
Chapter 5 of the NNA lists the grounds upon which Dutch citizenship can be revoked or lost. Dutch citizenship is revoked if it was acquired or issued on the basis of misrepresentation or fraud by the person concerned, or on the non-disclosure of a relevant fact, unless twelve years have since passed.[148] Dutch citizenship is also revoked for serious crimes[149] and with respect to minors, if the family relationship upon which Dutch citizenship was acquired no longer exists.[150]

There are also a number of grounds that bring with them an automatic loss of Dutch citizenship, including inter alia the voluntary acquisition of another nationality, making a declaration of renunciation and acquiring Suriname nationality as a consequence of the Assignment of Nationality Agreement.[151]

Dutch citizenship is not lost, however, if statelessness would be the consequence, with exception of the situation in which it was acquired or issued on the basis of misrepresentation or fraud.[152] Only in that case may Dutch citizenship be withdrawn where statelessness is the consequence. In making the decision, account should be taken inter alia of the nature and seriousness of the fraud and the possible statelessness of the person concerned following revocation.[153]

147 KST27831 section 4.

148 Art. 14, section 1 NNA. Persons who have been sentenced for one of the offences described in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court agreed in Rome on 17 July 1998 are excluded from the 'except' clause (Trb. 2000, 120).

149 Art. 14, section 2 NNA.

150 Art. 14 section 4 NNA.

151 For a complete list see Art. 15, 15A, 16 and 16 A of the NNA.

152 Art. 14 section 6 NNA.

153 Art. 68, section 1, Decision on acquisition and loss of Dutch citizenship.

CHAPTER 4

Determination procedures for statelessness in other countries

4.1 Introduction

Of the 85 countries which worldwide are party to the 1954 Convention, twelve countries have a determination procedure for statelessness: Belgium, the Philippines, France, Georgia, Hungary, Italy, Latvia, Mexico, Moldavia, Spain, Turkey and the United Kingdom. Under the influence of a worldwide campaign by the UNHCR, there are ongoing developments in various other countries with reference to establishing determination procedures. These developments are at an advanced stage in inter alia Brazil, Costa Rica and Uruguay. Austria has recently also declared that it wants to initiate a determination procedure.[154]

The following sets out which EU Member States recognize a determination procedure, whether any restrictions are placed on access to the procedure, whether a determination of statelessness leads to the grant of a residence permit and what the nature of the issued permit then is and applicable grounds for exclusion. The ACVZ gathered information about this from the steering committee of the European Network on Statelessness (ENS)[155] and studied the literature. With regard to the EU Member States which have a determination procedure, namely Belgium, France, Hungary, Spain and the United Kingdom, how they are set up will be further examined. The determination procedure in Italy is not discussed because it does not operate in practice.[156] Little is known of the determination procedure in Latvia,[157] and for that reason it is not discussed. To get an impression of the numbers of requests for a determination of statelessness and of the number of persons whose statelessness is established, a few figures are presented for each country.
The countries studied employ various rules, including those relating to access to the procedure, specific grounds on which persons are excluded from protection as stateless persons, the granting or failure to grant lawful presence during the procedure and the conditions which are placed on the residence permit issued to a stateless person.

4.2.1 Granting a residence permit

In the EU Member States with a determination procedure, the determination of statelessness leads to the grant of a residence permit. The exception is Belgium, but the Belgian Government has in the meantime expressed its intention of once more setting up its procedure for determination of statelessness and also of attaching a right of residence

154 See G. Gyulai, 'Statelessness in the EU framework for International Protection', European Journal of Migration and Law 2012, p. 288.

155 This information has been obtained from the chairman of the network, Gábor Gyulai, who also works with the Hungarian Helsinki Committee. This information dates from July 2013.

156 See G. Gyulai, 2012, p. 287.

157 Idem p. 287.

to it. Several conditions are attached to the permits. The following summary illustrates the diversity in conditions:

- Spain grants the same residence permit as is issued to refugees, an extendable permit valid for five years;
- France grants a permit based on 'private and family life', an extendable permit valid for one year;
- The United Kingdom grants a residence permit for, in principle, thirty months, extendable for a period of thirty months;
- Hungary grants a permit on humanitarian grounds for three years, extendable for a period of one year.

4.2.2 Grounds for exclusion

The countries which have a determination procedure all employ the grounds for exclusion from the 1954 Convention. These grounds for exclusion are included in Article 1, second section, of the Convention (see Section 5.3.5 for this). Some countries employ additional grounds for exclusion. In the United Kingdom, for example, a stateless person is issued a residence permit only if he cannot return to the country of origin or earlier residence or any other country. Hungary is the only country to exclude a stateless person from protection if he has deliberately renounced his nationality with the objective of becoming stateless. When deciding whether to exclude a person from the protection of the 1954 Convention, no assessment is made whether he can recover his nationality.

4.3 Determination procedures in Belgium, France, Hungary, Spain and the United Kingdom

Belgium

In Belgium there are two methods for determining statelessness. In the first place, statelessness can be established by the registrar of deaths, births and marriages at the registration of a birth. Belgium, as it happens, grants Belgian nationality automatically to children who are born in its territory and who otherwise would be stateless.

If it concerns a child not born on Belgian territory, a petition can be lodged with the Court of First Instance. In response to the petition the Legal representative on behalf of the State begins an investigation. He issues an advisory report with reference to the question of whether the applicant is stateless. After examining the application at the hearing the Court makes its ruling. Before making a ruling, the Court examines the documentary evidence presented and studies the nationality legislation of the States with which the applicant has a connection. An appeal may be lodged with the Court of Appeal against the ruling of the Court of First Instance. An appeal may be lodged with the Court of Cassation against a decision of the Court of Appeal. The applicant does not have an automatic right to reside temporarily in Belgium during the determination procedure. Statelessness does not of itself constitute a ground for granting a residence permit. Many stateless persons, however, are 'regularized' inter alia in connection with the long duration of their stay in Belgium, urgent humanitarian circumstances and the parenthood of Belgian children. There are few procedures to determine statelessness. This can also come about because the determination of statelessness does not give any right to stay in Belgium.[158]

158 The Antwerp Court of Appeal, which is the appeal body for five Courts of First Instance, dealt with a maximum of five cases per year during the period from 1999 to 2005. The Court of First Instance in Bruges made approximately ten rulings per year during the period from 2005 to 2007; in the period between 2008 and 2010 this Court made a ruling in only two cases. UNHCR, Mapping Statelessness in Belgium, Brussels: UNHCR, 2012, p.53.

Procedures usually take a long time and there is no uniformity in judicial decision making because all 27 Courts of First Instance deal with these cases.
In December 2011, the Belgian federal government undertook to work out a special procedure for determining statelessness. The idea has been suggested to give the General Commissioner for Refugees and Stateless Persons (CGVS) competence to determine statelessness.[159] The role of the CGVS is currently restricted to issuing documents from the registry of deaths, births and marriages to stateless persons recognized by the court. However, there appears to be a wide range of opinions about the question as to which public authorities ought to be competent for determining statelessness in the future, either at first instance or on appeal.

France
France has had a determination procedure since 1953. The Office Française de Protection des Réfugiés et Apatrides (OFPRA) assesses requests for the determination of statelessness.[160] A request for the determination of statelessness is lodged directly with OFPRA. A hearing of the applicant may constitute part of the procedure. On the basis of all elements of the applicant's account, a determination is made with which countries the person concerned has bonds. In order to determine whether the person concerned has the nationality of one of those countries, OFPRA can make inquiries with the relevant diplomatic representatives in France. During the procedure, the applicant has no legitimate residence in France and measures for the expulsion of the person concerned are not suspended. An appeal to an administrative court (tribunal administratif) can be instigated against the decision of OFPRA. A higher appeal can be brought to a higher administrative court (la Cour Administrative d'Appel) against the decision of the administrative court. Finally, an appeal in cassation can still be made to the French Council of State (le Conseil d'Etat).
Between 2006 and 2010, 931 persons lodged a request for determination. Compared with hundreds of thousands of applications for asylum during the same period, the number of requests for determination of statelessness constitutes a very small part of OFPRA's workload.[161] During the period referred to, 311 persons were found to be stateless. During the period 2006-2010 an estimated more than one million migrants came to France.[162]

Hungary
In July 2007, a determination procedure came into operation in Hungary. The processing of applications has been delegated by the Immigration and Naturalisation Service (Bevándorlási és Állampolgársági Hivatal) to the immigration department of this Service. Hungarian law provides for procedural and substantive rules with reference to the determination procedure, including regulations about the law of evidence. The law of evidence provides for a distribution of the burden of proof between the applicant and the body that decides the request.
In Hungary, access to the procedure is restricted to persons who have legal residence in that country. This has led Hungary to be criticized by the UNHCR. UNHCR considers

159 The Coalition Agreement of 1 December 2011, p. 134, states: 'The government will set up a procedure for the recognition of the status of stateless person through the Office of the Commissioner General for Refugees and Stateless Persons. The recognition of the status of stateless person will in principle have the result that a (temporary) residence permit will be issued'. (http://www.premier.be/sites/all/themes/custom/tcustom/Files/Regeerakkoord_1_December_2011.pdf)

160 The procedure is summarily described at the site of OFPRA < http://www.ofpra.gouv.fr/>.

161 G. Gyulai, 2012, p. 290.

162 Eurostat, table 'immigration by sex, age group and citizenship' <*ec.europa.eu/eurostat*> (25-10-2013). The French immigration figure for 2009 is missing. The immigration figure for France over this period was in succession: 2006:219,407; 2007:209,781; 2008:216,937 and 2010: 251,159.

that because of this, stateless persons, who are entitled to protection, are denied this by the requirement that the stateless person have legal residence on other grounds. The Hungarian court has overcome this problem and has attributed the status of stateless person to persons who materially complied with the conditions for recognition, but who did not have legal residence in Hungary.[163]
The applicant must be heard in the proceedings. Against a negative decision to the request an administrative appeal can be instigated with the governing body that made the decision. The governing body sends the appeal to the Fövárosi Törvényszék (translated into English as Metropolitan Court) which makes a decision on the appeal.
Until the end of 2010, 117 persons had lodged a request. Statelessness was established with regard to 61 persons.[164] By way of comparison: during the period 2007-2010 115,426 immigrants were registered in Hungary.[165]

Spain
Spain has had a determination procedure since 2001, based on a legislative regulation.[166] The task of determining statelessness has been assigned to the Oficina de Asilo y Refugio (OAR). A request for determination of statelessness can be lodged with immigration offices and police offices. Such a request will be considered only if it has been lodged within a month after entry into Spain or within one month of the expiry of the period of validity of a residence permit. The UNHCR, supported by international experts, is of the opinion that no basis can be found in the 1954 Convention to apply a time limit for the submission of a request for determination of statelessness. This can lead to arbitrary exclusions of persons who are entitled to the protection of the Convention.[167]
The OAR may also officially begin an investigation of statelessness. The person concerned can be heard in the proceedings. During the proceedings a temporary residence permit may be granted to the person concerned. Against a negative decision by the OAR the person concerned may appeal to the Audiencia Nacional (translated into English as National High Court), and in second instance to the Tribunal Supremo (translated into English as Supreme Court).
Between 2001 and 2011 1,532 persons lodged a request for determination; statelessness was established for 34 persons.[168] During the period 2002-2011 more than six million migrants were registered in Spain.[169]

United Kingdom[170]
In the United Kingdom, a determination procedure came into operation on 6 April 2013. The immigration service decides on requests for determination of statelessness. The procedure is open to any person within the territory of the United Kingdom who thinks that he is stateless. If the applicant has also filed an application for asylum, this is considered first. The applicant must submit all documentation which can support

163 The Court argued in a number of cases as follows: '(...) it is the Convention that sets the material conditions of the recognition of stateless status, according to which a stateless person is a person who is not recognised as a citizen by any country under its national law. As compared to the Convention, the Aliens Act ... cannot establish further material conditions for the recognition of statelessness.' (Example: case no. 24.K.31.412/2009/6).

164 G. Gyulai 2012, p. 293.

165 Source Eurostat, table 'immigration by sex, age group and citizenship'. (See note 214).

166 Eurostat, table 'immigration by sex, age group and citizenship' (see note 214).

167 UNHCR, Guidelines on Statelessness Sources of statistical data: OAR, UNHCR. No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, § 18.

168 Idem.

169 Eurostat, table 'immigration by sex, age group and citizenship' (see note 214).

170 Information about the determination procedure in the UK has been derived from the website of the UK Border Agency, http://www.ukba.homeoffice.gov.uk/

his application. The policy contains a non-exhaustive list of supporting documents. If a person has been recognized as stateless, he may submit an application for a residence permit for a specified period. This is granted for a period of 30 months and may be extended by 30 months. Persons having access to a country of previous residence or any other country are not eligible for a residence permit. After five years of legal residence in the UK, a residence permit may be granted for an indefinite period. A rejection of the request for determination of statelessness is not in all cases subject to appeal. Given the short period that has elapsed since the determination procedure came into force, there are no figures available on the number of requests and determinations of statelessness.

CHAPTER 5

Analysis

In this chapter, the Committee analyses its findings based on the research question as set out in the previous chapters. The research question, as formulated in Chapter 1, reads:

How do Dutch legislation and practice concerning the protection of stateless persons and the prevention and reduction of statelessness measure up to the international obligations of the Netherlands in this area?

This research question was then divided into five sub-questions:

a. what is understood by statelessness in legislation and in the literature?
b. what are the treaty obligations with regard to the protection of stateless persons according to the 1954 Convention relating to the Status of Stateless Persons?
c. what are the treaty obligations with regard to the prevention and reduction of statelessness according to the 1961 Convention on the Reduction of Statelessness?
d. to what extent does the Netherlands satisfy its treaty obligations?
e. is it possible to distil recommendations for the Netherlands from the practices in other countries?

In Chapter 3, where the legal framework is discussed, an answer has already been given to sub-questions (b) and (c). The present analysis provides an answer to the other sub-questions. First of all, attention is paid to the formal definition of statelessness which is the legal basis for identifying persons who are beneficiaries of the 1954 Convention and the 1961 Convention (sub-question (a), in section 5.1). Sub-question (d), namely, whether the Netherlands complies with its treaty obligations relating to statelessness, is answered by first of all looking at whether statelessness has been adequately established in the Netherlands (section 5.2). Identification of stateless persons is necessary in order to know who is and who is not covered by the protection of the 1954 Convention, and is also required to meet the obligation to avoid original statelessness among children as laid down in the 1961 Convention. Then comes the question of what is required for the effective enjoyment of the most important rights associated with the status of stateless person (Section 5.3), and the question is answered whether the Netherlands complies with the Convention of 1961 (Section 5.4). Finally, sub-question (e) is answered whether recommendations can be distilled for the Netherlands from the practices in other countries (Section 5.5).

5.1 Definition of statelessness

Section 2.2 is focused on the ongoing academic and social debate about the precise meaning of the concept of statelessness. The core of the debate is whether the scope of the 1954 Convention and, a fortiori, the 1961 Convention is limited to *de jure* statelessness, or also comprises *de facto* statelessness.
An analysis of the concepts of *de jure* and *de facto* statelessness shows that the legal definition of statelessness in Article 1 (1) of the 1954 Convention, in which the formal absence of nationality is central, refers to *de jure* statelessness. Indeed, *de facto* statelessness does not relate to the lack of formal citizenship, but to the lack of some functions and rights attached to nationality in an international context. In concrete terms,

de facto statelessness refers to the refusal by a State to assist a citizen residing in a foreign country and to allow him to return to the territory of that State. There is no international obligation to protect *de facto* stateless persons. In the Netherlands, aliens who could be regarded as *de facto* stateless can appeal to the no-fault policy.
Regarding the definition of statelessness, the Committee notes that the original English text and its Dutch translation do not match completely. In the original English text of the 1954 Convention, a stateless person is defined as 'a person who is not considered as a national by any State under the operation of its law.' The phrase 'under the operation of its law' makes it clear that to answer the question whether someone is stateless, one must not look merely to the legislation of a State, but must also assess how a State applies its nationality law in a particular case.[171]
In the Dutch translation of the definition section, which is also reflected in Article 1 (f) of the NNA, this nuance is lost because a stateless person is defined here as a person who is not regarded by any State as a citizen under its law. In the opinion of the Committee, the phrase 'krachtens diens wetgeving' [by virtue of its legislation] should be interpreted in accordance with the Convention.
The Committee also notes that in this context the phrase 'considered as a national' is not without significance. The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws already provides that the interpretation of nationality law is reserved to the respective state. If the State in question finds that a person cannot be regarded as its citizen, then this fact must be respected by other States.

5.2 The determination of statelessness

Article 1 (1) of the 1954 Convention provides the legal definition of a stateless person on the basis of which individuals may be identified who are eligible for protection under the Convention. With regard to the determination of statelessness, it is worth pointing out that the 1954 Convention is somewhat ambiguous. The Convention does not literally compel determination but, on the other hand, does presuppose that it takes place.[172]
Various provisions of the 1954 Convention also implicitly presuppose recognition as a stateless person. For example, it is likely that Article 32, which provides that states shall facilitate the naturalisation of all stateless persons, refers only to persons whose statelessness has been determined, and not to persons who are not yet recognized as stateless.[173]
The practical need to know who is stateless and who is not, still does not oblige states to determine statelessness. This obligation to interpret treaties in good faith[174] does follow from Article 31 of the Vienna Convention on the Law of Treaties – and thus also the 1954

171 In this connection see also UNHCR, Guidelines on Statelessness No. 1. The Definition of ´Stateless person´ in Article (1)1 of the Convention relating to the Status of Stateless Persons (20 February, 2012, HCR-GS-12-01), consideration 16: 'Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice and any review/appeal decisions that may have had an impact on the individual's status. This is a mixed question of fact and law'.

172 Article 9: 'Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, *pending a determination by the Contracting State that that person is in fact a stateless person* and that the continuance of such measures is necessary in his case in the interests of national security' (italics added).

173 See H. Battjes, European Asylum Law and International Law, Leiden: Koninklijke Brill NV, 2006 p. 457-466.

174 Art. 31 section 1 Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations: 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning of the terms of the treaty in their context and in the light of the object and purpose of the treaty'.

Convention - and in such a way that the provisions of that Convention become effective[175]. For those provisions of the 1954 Convention upon the basis of which no successful appeal can be made if one does not have the status of a stateless person, the absence of status determination means that they lose their meaning entirely. If the protection of stateless persons is to be effective, the statelessness of those who appeal to the Convention has to be determined, unless the State chooses to grant these rights and obligations to anyone who claims to be stateless without further investigation. Determination of statelessness is also required in order to comply with the obligation to avoid or reduce original statelessness among children, as laid down in Articles 1 and 4 of the 1961 Convention. The outcome of a determination procedure can also be that someone possesses a nationality which, if that is the case, makes the return of the alien concerned possible.
From both the request for advice from the Secretary of State and the policy response to the UNHCR report 'Statelessness in the Netherlands', the Committee deduces that it is not up for discussion whether the persons who can lay claim to the rights and obligations enshrined in the 1954 Convention and the 1961 Convention have to be identified. What is up for discussion is how statelessness should be established and who is eligible for determination. In response to the abovementioned UNHCR report, the responsible minister said that the Netherlands complies with its treaty obligations vis-à-vis stateless persons by means of GBA registration, together with the no-fault procedure. Based on its investigation, the ACVZ comes to a different conclusion. Why neither the GBA registration nor the no-fault procedure suffices for determining statelessness is discussed below.

5.2.1 Determination of statelessness and the GBA procedure

Article 43 sections 1 and 2 of the GBA Act specify that a foreign nationality is registered in the GBA on the basis of source documents which indicate nationality. Article 43, section 3 provides that if an alien who has no nationality or whose nationality is not known, this information is included in the GBA.
The Advisory Committee notes that section 3 of Article 43, unlike sections 1 and 2, does not explicitly state that the absence of any nationality should be substantiated with documents. The IPM GBA also does not state that statelessness can only be assumed if the lack of nationality is evident from documents which are required for the registration of a foreign nationality.

However, the opinions of the NVVB do prescribe that for the registration of stateless persons in the GBA the same rules should be applied as for the registration of a nationality. Interviews held by the Committee demonstrate that GBA officials often act in accordance with the NVVB advice as regards the registration of statelessness. This shows the registration character of the GBA: registration in the GBA occurs only if statelessness has already been determined. The registration in the GBA is thus not aimed at actively investigating statelessness and an independent determination of it by the official concerned. For this reason, GBA registration cannot be regarded as a determination procedure. The registration status of the GBA registration is also confirmed by the fact that registration of 'nationality unknown' generally does not trigger further investigation. Registration as 'nationality unknown' means that neither the nationality nor the statelessness of the person concerned can be determined.

175 See H. Battjes 2006, p. 467.

In the opinion of the Committee, the practice surrounding GBA registration is at odds with Article 6 of the 1954 Convention, which provides that a stateless person, for the exercise of his rights, must satisfy all the requirements which ordinary aliens must satisfy, with the exception of those requirements a stateless person cannot fulfil due to the nature of statelessness. Current practice requires from the stateless alien that he demonstrate with documents something that is not there, namely the lack of nationality. In the light of the observations made by the Netherlands about Article 6 at the time of the adoption of the 1954 Convention, this practice is all the more remarkable. At that time, the Netherlands campaigned for the inclusion of Article 6 in the Convention to prevent stateless persons from being treated in the same way as other aliens and having to provide evidence of their nationality.[176]

In the policy response already mentioned to the UNHCR report 'Statelessness in the Netherlands', the Minister of the Interior and Kingdom Relations and the Minister for Immigration, Integration and Asylum argued in defence of the view that the GBA registration is sufficient for determining statelessness, that the criteria for registration of statelessness are sufficiently clear and that the registration therefore, takes place in a correct manner. Based on the interviews held, the Committee has reservations in this regard. The interpretation of foreign nationality law, necessary in order to assess whether someone has a given nationality or is a stateless person, is by no means easy. The municipal officials interviewed indicated that the required knowledge and skills are often not present with respect to nationality issues. The complexity of nationality issues, combined with a lack of knowledge in these municipalities means that municipalities deal differently with the registration of statelessness. In some municipalities, the burden of proof for statelessness is handled in a rather accommodating manner, while in other municipalities unfamiliarity with the subject matter of statelessness ensures that officials balk at registering a person as stateless. The complexity of nationality issues and unfamiliarity with the problem of statelessness and the lack of national guidelines carry a risk of arbitrariness in the GBA registration.

Finally, there is another compelling objection against relying on the GBA registration. Registration in the GBA is available only to foreign nationals who have legal residence and who can reasonably be expected to maintain residence in the Netherlands for at least four months during a six month period. Stateless persons without (earlier) lawful presence in the Netherlands are, therefore, excluded from the GBA registration, and hence from recognition of statelessness.

The GBA Act will soon be replaced by the BRP Act. A significant change in the new BRP Act, as compared to the GBA, is that it will allow details about nationality and identity established in the context of admission of the alien into the Netherlands by means of a communication from the responsible minister, to be included in the BRP at a first registration if the nationality or statelessness of the alien concerned is not apparent from the authorized source system. This means that an alien considered stateless by the INS in the course of his admission to the Netherlands is may also be registered as such in the BRP.

The BRP will be advantageous to those stateless persons regarded by the INS as such within an immigration law context because the burden of proof will be lightened for this group. However, this does not resolve any of the other objections against GBA

176 See Nehemiah Robinson 1955/1997.

registration. These continue to apply to the BRP. For aliens who claim to be stateless, but are not regarded as such by the INS, there is still no determination procedure available. The BRP aims to reduce the category of 'nationality unknown' by accepting the nationality and identity known to the INS via a communique from the Minister. This does not mean that with the introduction of the BRP an adequate determination procedure has been introduced.

5.2.2 Determination of statelessness and the no-fault procedure

The Aliens Act 2000 does not provide for a residence permit on the grounds of statelessness. The Netherlands does have a no-fault policy which regulates the residence of aliens about whom there is objective proof that they cannot leave the Netherlands through no fault of their own. Until April 2005 the no-fault policy was restricted to stateless persons and was therefore also called the stateless persons policy. After this change in 2005, the no-fault policy was open not only to people without a nationality, but also to those aliens who in spite of their nationality did not succeed in returning to their country of origin.

In the current no-fault policy there is no mention of determining statelessness. In the first place, the no-fault procedure assesses whether the alien will be admitted into the territory of another State and not whether the alien concerned is recognized by that State as a citizen or has a right of residence in another State. Secondly, the Committee finds on the basis of its own research and analysis by the University of Tilburg, that statelessness does not play a role in the assessment of whether the alien through no fault of his own cannot leave the Netherlands.[177] Because statelessness apparently plays no role, it has, therefore, not been determined in this procedure. Finally, the Committee notes that the no-fault procedure is available only to foreigners who do not have a right of residence in the Netherlands. However, even aliens who do have a right of residence have an interest in establishing their statelessness, for example, with a view to possible naturalisation.

5.3 Rights arising from the 1954 Convention

This section addresses the question of what is required for the effective enjoyment of the most important rights attached to the status of stateless person. This question is answered on the basis of both the 1954 Convention itself and the idea of protection that this Convention has in common with the 1951 Refugee Convention. Both conventions are intended to offer international protection to foreigners who cannot rely on their own State; and both conventions grant legal claims that are not based on nationality but on the lack of protection resulting from the lack of nationality, or as a result of the disturbed relationship between the refugee and the State of which he is a citizen. Below, there is first a discussion of the meaning and implication of this parallel and an explanation of the Committee's position. Then follows an analysis of the 1954 Convention.
Finally, this section discusses the question as to whether the NNA is implemented in accordance Article 32 of the 1954 Convention, which provides that states will facilitate the naturalisation of stateless persons as much as possible.

177 S. Jaghai & C. Vlieks 2013.

5.3.1 Objective of the 1954 Convention

The Preamble to the 1954 Convention provides that the objective of the Convention is to ensure that stateless persons enjoy to the greatest possible extent the exercise of their fundamental rights. In the same terms, the Preamble to the Refugee Convention makes it clear that the objective is to ensure that refugees enjoy to the greatest possible extent the exercise of their fundamental rights. The shared objective of both treaties stems from the fact that both refugees and stateless persons cannot rely on their own State for the protection of their fundamental rights. The Committee wishes to emphasize that the 1954 Convention is intended to offer international protection to people who are otherwise unprotected.

5.3.2 International protection

In Section 2.1, statelessness is described on the basis of the lack of nationality. Nationality, it was said there, establishes a relationship of protection between the individual and the State of which he is a citizen.[178] Statelessness then signals the risk of a lack of protection in the absence of nationality.
The problem of 'lack of protection' is usually associated with the problem of refugees. Indeed, the definition of refugees under the Refugee Convention, as opposed to the legal definition of stateless person, makes explicit mention of the lack of protection. Thus, a refugee is defined in the Refugee Convention as someone with a well-founded fear of being persecuted for reasons of race, religion or any other basis, and who cannot or, because of fear of persecution, will not avail himself of the protection of the State (or of the country of previous residence).
The lack of protection is, therefore, typically associated with persecution or serious human rights violations,[179] against which the State of origin cannot or will not provide any protection, and not with statelessness. The formal lack of a nationality that characterizes the stateless person is of a different order as compared to the persecution the refugee has to contend with, or the serious violation of rights he has to endure in his country of origin.
The association between 'lack of protection' and persecution and/or serious human rights violations is the result of a re-interpretation of the definition of refugee on the basis of human rights.[180] Under the influence of this reinterpretation, the lack of protection is today understood to refer to the lack of protection within the refugee's own country. However, this interpretation of human rights[181] is a major shift in relation to the

178 See section 2.1.1.

179 Guideline 2011/95/EU.

180 See H. Battjes De Ontwikkeling van het begrip bescherming in het asielrecht [The Development of the concept of protection in asylum law] (oration), 2012, p.16.

181 See idem p. 19. Also, with regard to stateless persons, a human rights interpretation of protection is becoming increasingly popular. For example, the UNHCR has prepared the recently published Guidelines on statelessness by re-interpreting the 1954 Convention and the 1961 Convention on the basis of relevant human rights conventions. This human rights approach to stateless persons is also clear from a speech in 2010 by the Human Rights Commissioner of the Council of Europe, Thomas Hammarberg: The right to a nationality has often been described as the right to have rights. This is because the attachment to a State entitles citizens to enjoy human rights in a more concrete and effective way than with reference to an international human rights system alone. Yet nationality is not a pre-condition for enjoying human rights. Stateless persons, too, are rights holders under international human rights instruments. States are required to protect everyone, including those without any nationality, from human rights violations.
This is the challenge that stateless persons pose to the international human rights system. While we need to recognise and promote the right of everyone to a nationality, we must also ensure that statelessness does not result in violations of human rights. Statelessness should prompt the international human rights system to offer greater protection rather than exclude or forget stateless persons from its scope'.
(Available from: https://wcd.coe.int/ViewDoc.jsp?id=1722017).

protection concept that was prevalent at the time of the drafting of the Refugee Convention and the 1954 Convention.[182] Within the legal constellation of post-war Europe, when the individual was not yet recognized as having rights in international law, the lack of protection was not related to the lack of protection within one's own country, but to the lack of protection suffered by the refugee as well as the stateless person due to the fact that they found themselves outside any protective relationship with a State.[183] The fugitive was located outside a protective relationship with a State because he had fled his country, had crossed the border and had ended up abroad. The stateless person was outside any protective relationship because he was not recognized by any country in the world as a citizen, had no home anywhere and was a stranger everywhere. Refugees and stateless persons, as ordinary aliens, could not turn for protection to the diplomatic or consular mission of the State of origin, nor could they return home as ordinary aliens.[184] Both refugees and stateless persons appeared in the international legal order as 'unprotected people'.[185]

It is against this background that the Refugee Convention and the 1954 Convention aim to provide international protection.[186] Both treaties provide to refugees and stateless person respectively legal entitlements that are based not on a nationality, but on the lack of protection. The Refugee Convention can, therefore, offer a helping hand in the interpretation of the 1954 Convention, without attributing an absolute value to the Refugee Convention in relation to the 1954 Convention.

5.3.3 International protection and right of residence

Neither the Refugee Convention nor the 1954 Convention provides a right of residence to persons who have been granted the status of refugee or stateless person. Yet the international protection regime for refugees evolved in such a way that recognition as a refugee generally means approval of the permanent residence of the refugee unless exceptions occur. Thus, Article 24 of the EU Qualification Directive 2011/95/EU prescribes that, following the granting of international protection, Member States shall issue a residence permit to people with refugee status or subsidiary protection status. The objective of providing international protection for refugees has been so concretized that recognized refugees are granted residence status, ensuring that refugees are entitled to all the rights set out in the Refugee Convention.
With the exception of a few countries (see Chapter 4), the majority of countries do not provide a residence status on the basis of statelessness. The Dutch Aliens Act also does not provide for such a status.
The lack of a right of residence for stateless persons while residence is granted to recognized refugees is elucidated in the academic literature on the basis of the difference in wording and systematic approach between the 1954 Convention and the Refugee Convention. In this reasoning, the two treaties are seen as so parallel that the Refugee Convention is used as a yardstick for interpreting the 1954 Convention. Although the ACVZ does not share this reasoning, it briefly expands on this below because of the

182 Battjes (2012), p. 16 describes this shift thus: '[P]rotection a new meaning: no longer diplomatic protection by the country of origin to the citizen who is outside the boundaries but protection by the State on its territory against impending human rights violations'.

183 See H. Van Panhuys, The Role of Nationality in International Law, Leiden: Sijthoff Uitgeversmaatschappij, 1959, p. 44.

184 See, for example, 'Communication from the International Refugee Organization to the Economic and Social Council (1949), as cited in J. Hathaway, 2005 pp. 84,5. 2005 pp. 84-85.

185 See P. Weis 1979, p. 44.

186 Goodwin Gill, (1994), pp. 390-1.

prominent attention given to it in the literature.
The Committee recognizes that there are important similarities between the two conventions. Thus, it is first of all noteworthy that the Refugee Convention and the 1954 Convention are largely similar in terms of systematic approach. Thus in both treaties, both the alien and the private citizen are used as benchmarks for assigning rights. Some provisions prescribe that refugees/stateless persons should be treated in the same way as citizens of the State where they are located; other provisions prescribe that refugees/stateless persons should be treated in the same manner as aliens 'under the same circumstances'. 'Under the same circumstances' should be interpreted to mean that a refugee/stateless person for the exercise of a right must meet all requirements, including duration and conditions of stay or residence with which he would have to comply if he were not a refugee/stateless person, except for the requirements a refugee/stateless person cannot meet due to their nature.[187]
The rights provided in the Conventions are also bound to various qualifying conditions. The Refugee Convention and the 1954 Convention both provide rights to refugees / stateless persons who i) are subject to the jurisdiction of a State, ii) are located within the territory of a State, iii) are there lawfully or iv) have lawful stay there.[188]
It is thus clear from the systematic approach of the two conventions that the rights that fall within categories i) and ii) do not require the beneficiary to be lawfully present or to have a residence permit. Important rights of stateless persons in this regard include the right to identity documents[189] and the right to travel documents.[190] For rights that fall within categories iii) and iv) on the other hand, including the right of access to employment,[191] freedom of movement,[192] and access to higher education,[193] lawful presence or residence is required.
Despite the similarities mentioned, however, there is an important difference between the 1954 Convention and the Refugee Convention. The 1954 Convention grants stateless persons the same rights and obligations as those which the Refugee Convention confers, with the exception of two provisions which may be regarded as the cornerstones of the Refugee Convention, namely, Article 31, which provides that in certain cases States may not impose penalties on refugees for illegal entry, and that the movement of such refugees must not be restricted further than is necessary until their status has been regulated; and Article 33, in which the prohibition against refoulement is formulated and which applies to every refugee regardless of the legality of his presence, if non-refoulement is to have more than an illusory significance.
Article 31 and Article 33 of the Refugee Convention emphasize the special nature of the protection of refugees within immigration law because these provisions exempt aliens from the requirements and conditions that States normally impose on the entry and residence of aliens.
If the Refugee Convention is taken as the standard for interpreting the 1954 Convention, then the lack of counterparts to Articles 31 and 33 of the 1954 Convention could be

187 Respectively Art. 6 of the 1951 Convention and Art. 6 of the 1954 Convention.
188 See section 3.1.1.
189 Art. 27 of the 1954 Convention.
190 Art. 28, second sentence of the 1954 Convention.
191 Art. 17, Art. 18, Art. 19 of the Convention Relating to the Status of Refugees; Art. 17, Art. 18, Art. 19 of the 1954 Convention.
192 Art. 26 of the Convention Relating to the Status of Refugees; Art. 26 of the 1954 Convention.
193 Art. 22, section 2 of the Convention Relating to the Status of Refugees article; Art. 22, section 2 of the 1954 Convention.

explained in this way: that stateless persons[194] - unlike refugees - must comply with the conditions for entry and residence which States normally impose on aliens.[195] Should stateless persons not be able to do so, the argument would go, they could claim only those rights from the 1954 Convention that do not require the presence or residence of stateless persons to be lawful, but require only that the stateless person be present within the territory of the State. In practice, this would mean that a stateless alien who is merely present on the territory of the State without such presence being lawful, is entitled only to an extremely limited number of rights, such as obtaining identity papers and transfer of assets.[196] This would mean that a stateless person, in order to claim all the rights in the 1954 Convention, must meet not only the legal definition of stateless person, but also the conditions for entry and residence laid down in a State's immigration law.
That stateless persons may, and refugees may not, be subjected to the conditions and requirements for admission and residence normally imposed on aliens, was apparently the view of the Cabinet in 2007. In response to a complaint from the National Ombudsman about the refusal to provide identity documents to an unlawfully resident stateless alien, the responsible minister stressed that first the lawfulness of the alien's residence had to be established before any rights could be assigned to him as a stateless person: 'After all, it would not be reasonable to assess the alleged statelessness without determining whether the alien is entitled to lawful residence in this country on the basis of a residence permit', the Secretary of State said.[197]

The argument that on account of the absence of Articles 31 and 33 of the Refugee Convention in the 1954 Convention, a stateless person must satisfy the normal conditions of entry and residence in order to claim all the rights of the 1954 Convention, assumes that the 1954 Convention distinguishes between two categories of stateless persons, even after recognition as a stateless person has taken place, namely: stateless persons who are present within the territory of a State, but without the competent authority having agreed to this presence, on the one hand, and stateless persons who are lawfully present and/or lawfully reside in a State on the other hand.
This reasoning, as well as its premise, is unsound in the opinion of the Committee. As mentioned, the Committee considers that the parallel between the Refugee Convention and the 1954 Convention is useful, insofar as, and because it clarifies that the two conventions are intended to offer international protection to aliens who cannot rely on their own State, and consequently give to refugees and stateless persons legal rights not based on nationality, but on a lack of protection. This does not mean, however, that the meaning and application of the 1954 Convention can be measured solely against the Refugee Convention. The Refugee Convention is indeed relevant as an additional measure in the interpretation of the 1954 Convention, but the provisions of

194 N. Robinson argues, for example: 'The Convention as a whole [does not] deal with the rights a stateless person illegally in a contracting State would enjoy under a provision requiring lawful stay or habitual residence. It would seem that the only rights such a stateless person could claim are those referred to in article 7(1)'. N. Robinson 1955/1997.

195 So argues Van Waas 2008, p. 249, for example, after having pointed to the lack of Articles 31 and 33 that according to her guarantee an effective and fair procedure and is an added basis for acceptance of the recognised refugee: '[W]ithout provision for lawful entry or regularization of a stateless person's immigration status under the 1954 Stateless Convention, states parties are free to treat the non-refugee stateless as any other non-national and subject them to the regular provisions of immigration law'.

196 According to Van Waas 2008 p. 230: 'The possession … of an irregular immigration status severely curtails the enjoyment of rights under this instrument. This aspect of the regime must be taken into account later as we discuss the effectiveness of the Convention in protecting the various rights of the stateless'. The drafting of the 1954 Convention by analogy with the Refugee Convention was based at that time, according to Van Waas on an incorrect comparison between stateless persons and refugees (see Van Waas p 298). Conversations have revealed that for that reason Van Waas now advocates interpreing the 1954 Convention with regard to object and purpose in the light of international human rights.

197 As cited in National Ombudsman Report 2007/328, 28 December 2007.

the 1954 Convention must also be interpreted independently within the context of that Convention.

5.3.4 Interpretation of the 1954 Convention

The explanation in Section 5.2. of the obligation to provide a determination procedure already indicated the importance of Article 31 of the Vienna Convention. Article 31 brings with it an obligation to interpret treaties in good faith in a way that makes the provisions effective.[198] The relevant question is, therefore, what is required for the effective enjoyment of the rights linked to the status of stateless person.
In the opinion of the Committee, this requires that after granting international protection to individuals by recognizing them as stateless, a residence permit should be issued. If States do not have to accept the residence of recognized stateless persons as lawful, this would mean that the rights from the 1954 Convention which require lawful presence and/or residence would be limited to those cases in which a State for other reasons has already accepted the lawful residence of the person concerned. This deprives these provisions from the Convention of any meaning because in the vast majority of cases rights would be granted only to people who already possessed such rights on other grounds. Limiting the rights from the 1954 Convention to people whose presence and/or residence status was already lawful before determination does not do justice to the aim of the 1954 Convention, as clearly expressed in the Preamble, namely ensuring to the greatest possible degree the exercise of fundamental human rights and freedoms by stateless persons.
It was explained in the previous section that the rights and obligations flowing from the 1954 Convention are tied to various qualifying conditions which differentiate the rights and obligations related to residence status. The Advisory Committee notes that the differentiation between presence of a stateless person within the territory on the one hand, and lawful presence and lawful stay on the other hand, cannot be equated with the distinction between non-lawful residence of the alien on the one hand, and lawful residence on the other. It is, therefore, not the case that the 1954 Convention grants rights to different categories of stateless persons and makes a distinction between stateless persons who stay unlawfully and receive few rights, and stateless persons who stay lawfully and are given more rights. That the rights and obligations under the Convention are bound to different qualifying conditions must be construed, in the Commission's view, as meaning that the 1954 Convention grants phased rights to stateless persons. As the attachment with a State becomes stronger, for example, through recognition as stateless and length of stay, the Convention grants more rights. In the view of the Committee, the relevant distinction is not between stateless persons unlawfully residing and stateless persons lawfully residing, but rather between stateless persons awaiting status determination, on the one hand, and persons recognized as stateless persons, on the other.[199]

198 See, for example, ICJ La Grand 27 June 2001, ICJ 466 (Germany v. USA); ECHR Grand Chamber 4 February 2005, complaint PROTECTED/99 (Mamatkulov), paragraph 123.

199 Here the Committee looks explicitly to the UNHCR Guidelines for guidance, in particular Guideline No. 3 The Status of Stateless Persons on a National Level, section 13: 'The rights provided for in the 1954 Convention are extended to stateless persons based on their degree of attachment to the State. Some provisions are applicable to any individual who satisfies the definition of "stateless person" in the 1954 Convention and are either subject to the jurisdiction of a State party or present in its territory. Other rights, however, are conferred on stateless persons, conditional upon whether an individual is "lawfully in", "lawfully staying in" or "habitually resident" in the territory of a Contracting State. States may thus grant individuals determined to be stateless more comprehensive rights than those guaranteed to individuals awaiting a determination. Nevertheless, the latter are entitled to many of the 1954 Convention rights. This is similar to the treatment of asylum-seekers under the 1951 Convention'.

The Committee notes the impact that the non-acceptance of lawful presence and residence of a recognized stateless person would have in the Dutch context. A recognized stateless person who does not receive a residence permit would lead an extremely marginal existence here: because of the Benefit Entitlement (Residence Status) Act acquiring any socio-economic status will be impossible, and through the application of the EU Return Directive, the Dutch State would have to take measures to prepare for his expulsion, which as a rule will not be able to take place since not a State in the world can be held responsible for taking back a stateless person. Readings of the provisions of the 1954 Convention designed to guarantee a stateless person a certain social position, and which assume the lawful residence of the stateless person, require when read with regard to subject matter and purpose, that the stateless person facing such a hopeless situation be granted legal residence.

In this context, it is important to recall the difference in legal status between an unlawfully resident alien with a nationality in this country, on the one hand, and an unlawfully resident stateless alien, on the other. Persons without a nationality will often have the greatest difficulty in obtaining the necessary identity and travel documents which States as a rule provide only to their own nationals.[200] Stateless persons will, therefore, often not be able to leave the country of their former residence legally nor be able to travel to another country legally.[201] Statelessness which occurs within a migration context will thus often mean a situation of illegal migration. But there is an important difference between the problem of statelessness and the problem of irregular migration. Aliens with a nationality who reside unlawfully within the territory of a State are excluded from a range of political, economic, social and cultural rights not because they would not have these rights, as is often claimed, but because they are deemed to be exercising their fundamental human rights such as right to work, education and care in the State of which they are a national.[202] The nationality of aliens who are staying unlawfully egally underpins their exclusion of rights in the host country under the premise that they should exercise their rights elsewhere, namely in the State of origin. Statelessness, precisely to the extent that it signals the absence of nationality, thwarts this premise. The stateless alien cannot, or at least not obviously, escape a situation of illegality by returning to a country of origin where he could exercise his rights as a citizen that usually flow from nationality.[203] In the view of the Committee, it is this situation which is partially the basis for an obligation to accept the residence of the stateless alien[204] within the meaning of Article 8 of the Aliens Act 2000.

Reviewing the above, it is the Committee's view that lawful residence should be granted to persons whose statelessness has been established should there be an issue of the effective enjoyment of the rights laid down in the 1954 Convention, unless there are legitimate grounds for excluding the alien from recognition as stateless and, therefore, from residence as a stateless person. The exclusion grounds are discussed below.

200 See section 2.1.1.

201 Idem.

202 See G. Noll, 'Why Human Rights Fail to Protect Irregular Migrants', European Journal of Migration and Law 2010-12, p. 241.

203 See also L. Van Waas, 'Nederland: Microkosmos voor de actuele staatloosheidsproblematiek' [The Netherlands: Microcosm for the current statelessness problem], AM&R 2013, p. 257.

204 Cf. Grahl-Madsen The Status of Refugees in International Law II. Asylum. Entry and Sojourn, Leiden: Sijthoff, 1972, p. 378: 'The salient point being that the stateless person will be unable to leave the territory, unless some other State should be willing to accept him. It is also arguable that a right of establishment ensues from provisions of the Convention relating to the Status of Stateless persons of 28 September 1954, notably articles 7 (1) and 31.'

5.3.5 Exclusion of recognition as stateless person

The above analysis leads to the conclusion that recognition as a stateless person should be possible, both for aliens with lawful residence and for aliens without lawful residence. However, in the opinion of the Committee there may be other reasons, to exclude certain aliens from the protection of the Stateless Persons Convention.

Reasons for excluding certain aliens from recognition and protection are given by the exclusion grounds contained in Article 1, second paragraph, of the 1954 Convention. This provision stipulates that the protection of the Convention cannot be relied upon by:

- persons who already enjoy the protection or assistance of the United Nations such as refugees;
- persons who are stateless, but who are considered by the authorities of the country in which they are established as having the rights and obligations linked to the nationality of that country;
- persons who disqualify themselves from protection because they have committed a crime against the peace, a war crime or against humanity, or have committed a serious non-political crime outside the country of residence prior to their admission to that country, or are guilty of acts contrary to the purposes and principles of the United Nations.

A second exception can be made on the basis of an analogy with article 31 of the 1954 Convention, which states that an exception to the prohibition of deporting stateless persons who are lawfully present applies when it comes to people who threaten national security and public order. This exception applies a fortiori to stateless persons who are not lawfully resident. Also, in these cases there is the possibility that expulsion cannot be effected.

A third exception can be made for a stateless person who has lawful residence in another State. This exception follows from the text of the Convention of 1954 in conjunction with other sources of international law. It follows, for example, from Article 33 of the Refugee Convention that a refugee may be deported to a country where he has lawful residence (compare Article 26 directive 2005/85), and Member States may expel non-EU citizens on the basis of Article 6 paragraph 2 directive 2008/115 to a Member State which has issued a residence permit. This exception is not completely in line with Article 1 paragraph 2 and under II of the 1954 Convention, which excludes persons recognized elsewhere as beneficiaries of all rights that apply to those possessing the nationality of that State, which is a stronger position than just having a residence permit. However, expulsion of the stateless person who has a right of residence elsewhere is not contrary to the object and purpose of the Convention: the stateless person has, after all, the enjoyment of his rights and freedoms elsewhere.

5.3.6 The Netherlands Nationality Act and accelerated naturalisation of stateless persons

One provision of the 1954 Convention deserves special attention because, although it imposes no hard obligation on States, it has found its way into the NNA. This concerns Article 32, which provides that States will facilitate the naturalisation of stateless persons as much as possible. Article 8 paragraph 4 of the NNA specifies that stateless persons who are admitted into the Netherlands and who have their principal residence here may be naturalized after three years. At first glance, this article seems to do justice to

the provision in Article 32 of the 1954 Convention. However, Article 8 paragraph 4 of the NNA is stripped of its meaning in practice by the requirement that the alien must be registered in the GBA as 'stateless' should he want to appeal to that status successfully in the Netherlands. The ultimate effect is that stateless persons who do not meet this requirement do not qualify for accelerated naturalisation, even if the alien has been registered in the Aliens Administration records (at the INS) as 'stateless' and is known to the municipality as 'presumed stateless'. More important is that because of this requirement stateless persons without an asylum permit and who cannot meet the burden of proof for registration in the GBA, cannot possibly be naturalized. They have to comply with the passport requirement. The GNNA even records that persons who claim to be stateless but are registered as "of unknown nationality" in the GBA must comply with the renunciation requirement.[205]
On 1 January 2012 nearly 20,000 regular permit holders, registered as 'of unknown nationality', had already been settled for more than six years in the Netherlands. From the cases known to the Committee, it seems that among these there presumably also are stateless persons who are unable to meet the burden of proof, but it is impossible to determine how many people this affects.

Even when an alien is registered as stateless in the GBA, difficulties can still arise. Depending on the nature of the case, stateless persons are exempted from the passport requirement pursuant to the GNNA, just like refugees. Unlike refugees, however, stateless persons do have to produce a birth certificate. Exemption from this requirement is only granted if there is evidence of lack of proof of identity. Lack of proof of identity is only very exceptionally accepted. The figures on migrants registered in the GBA as stateless who have been settled in the Netherlands for more than four years indicate that stateless persons in possession of a regular residence permit do experience problems with naturalisation. Of the 258 stateless migrants who had settled in the Netherlands more than four years ago, 221 were people (about 86%) in possession of a residence permit.

That stateless persons in principle have to produce a birth certificate in order to be able to be naturalized, a condition which is only very exceptionally waived, is in the view of the Committee at odds with Article 32 of the 1954 convention. The Committee points out in this connection that Article 32 of the 1954 Convention and Article 34 of the Refugee Convention are identical. Also, the ECN puts stateless persons and refugees in the same category with regard to naturalisation. Article 6, paragraph 4 (g) of this Convention provides that States are to facilitate in their national legislation the acquisition of nationality for stateless persons and recognized refugees who have their lawful and habitual residence within the territory.

In addition, the document requirement fails to recognize the nature of the problem of statelessness. In the international legal system a stateless person is an unprotected person who cannot rely on the State of which he is a citizen. It is unreasonable to deny vulnerable persons who do not have a nationality permanent access to citizenship of a State. In addition, the birth certificate requirement fails to recognize that it is often difficult, if not impossible, for many stateless persons to obtain identity documents because they never were, or no longer are, registered and a vicious circle exists between statelessness and the

205 Art. 6a, section 1 IPM (01-04-2013).

non-registration of births.[206] Finally, the Commission considers that with this measure does not necessarily accomplish the intended objective, namely of establishing the identity of the alien. A birth certificate, unaccompanied by another identifying document or a passport, provides but little proof of the identity of a person.

5.4 The application of the 1961 Convention in the Netherlands

This section answers the last part of sub-question (d) – whether the Netherlands is meeting its treaty obligations – by seeing whether the Netherlands fulfils its obligations with regard to preventing and reducing statelessness as set out in the 1961 Convention.

5.4.1 Acquisition of Dutch nationality for stateless children born in this country

In accordance with the treaty obligation to prevent or reduce original statelessness, Article 6 paragraph 1 (b) of the NNA provides for an option right for stateless children born in this country. One has the right of option if there has been admission and principal residence for an uninterrupted period of three years, and the alien has been stateless since birth. There is admission if the alien is lawfully resident pursuant to Article 8, Introduction, and (a) – (e), and (i) of the Aliens Act 2000. The NNA is looking here for a link with the ECN, which under Article 6 paragraph 2 offers States the opportunity of making the request for nationality by, or on behalf of, the child born stateless dependent on the lawful and habitual residence of the alien.

The NNA intends in this way to prevent original statelessness by granting stateless children born in the Netherlands an option right, but limits this right to children of parents who have legal residence. Children who are born in the Netherlands and are stateless but whose parents have no right of residence are thus excluded from the possibility of obtaining Dutch nationality using the option right. On 1 January, 2012, 85 children born in the Netherlands, who were aged four years or older and were not in possession of a residence permit, were registered in the GBA as stateless. If the requirement of lawful residence had not been imposed, these children could have obtained Dutch citizenship using the option. It is unknown how many stateless children born in this country are registered as 'of unknown nationality' or are not registered at all.

The Committee realizes that the government values an integrated immigration policy, in which individuals who are not lawfully resident cannot acquire rights within the framework of immigration law. But the limitation of the option right to admitted children is incompatible with the objective of avoiding original statelessness to which the Netherlands has committed itself by ratifying the 1961 Convention. This Convention permits linking the acquisition of nationality at the request of the child born stateless to the condition that the child has habitual residence within the territory of the State whose nationality the child is requesting. Several international provisions that give the concept of habitual residence content make it clear that the term refers to a factual situation and

206 See Chapter 2 for this. In the cases in which stateless persons do possess a birth certificate, they can, like other aliens, encounter difficulties in legalising the document. (For this problem, see Boeles, P. (2003), Mensen & Papieren, Legalisatie en verificatie van buitenlandse documenten in 'probleemlanden' [People and Papers: Legalisation and verification of foreign documents in 'problem countries']. Utrecht: Forum). This is not specific to stateless persons. What is specific to stateless persons is the difficulty of obtaining a birth certificate because the birth was never registered.

does not require that a legal qualification be given to the residence.[207] Article 1 under (d) of CASSS, for example, defines 'habitual residence' as 'actual residence'. It also appears from the legislative history of the 1961 Convention, that the term 'habitual residence' should explicitly not be fraught with legal requirements.[208] This confirms what was already stated in the travaux préparatoires of the Refugee Convention - which, as explained above, have a certain relevance to the interpretation of the 1954 Convention and the 1961 Convention - namely, that habitual residence refers to a factual situation regardless of its lawfulness.[209] And Resolution 72 of the Council of Europe On the Standardization of the Legal Concepts of Domicile and Residence, in which the concept of habitual residence is clarified, also contradicts the view that habitual residence is involved only if the authorities have agreed to the residence.[210]
Habitual residence refers to the meaningful relationship which a person has with the place where he resides - or, in the case of children, where they are born and grow up - in which the special relationship arises from the length of stay and its lasting nature. To determine whether there is a question of habitual residence, the relevant question is where a person's everyday and personal life takes place, and it is irrelevant whether this residence is permitted under the conditions laid down in immigration law.[211]

In the opinion of the Committee, the phrase 'admission and principal residence' is not consistent with the meaning of the concept of habitual residence. Thus, Article 6 of the NNA contravenes the 1961 Convention and runs counter to the goal of reducing original statelessness among children.

Moreover, the Committee notes that with a view to avoiding or reducing statelessness among children the current GBA practice, is disadvantageous. In Section 5.2.1 it was concluded that the GBA registration encourages long-term registration of 'nationality unknown' because no active investigation into the nationality or statelessness of the alien concerned is undertaken. On 1 January 2012, a total of 5,641 children aged five years or older who were born in the Netherlands were registered in the GBA as 'of unknown nationality'. Long-term uncertainty about the nationality or statelessness of the child sits uneasily with the option for Dutch citizenship which children can exercise after three

207 See G.R. De Groot, 'Staatloze kinderen: internationale standaards over hun recht op nationaliteit' [Stateless children: international standards about their right to nationality], Het kind in het immigratierecht [The child in immigration law], 2012, p. 122.

208 Cf. O.W. Vonk, P. Vink, Protection Against Statelessness: trends and regulations in Europe, EUDO Citizenship Observatory 2013, p. 30 <http://eudo-citizenship.eu>: 'The drafters of the 1961 Convention sought to guarantee a right to nationality and were concerned that interpreting "habitual" residence as lawful residence, a State could avoid the obligations of the Convention by refusing a stateless person a residence permit –a situation which it sought explicitly to avoid through the strict formulation of the permissible requirement of 'habitual residence' set forth in Articles 1(2), 1(4) and Article 4.'

209 See UN Doc. E/AC.32/SR.41; UN Doc. E/AC.32/SR.42.

210 Council of Europe Resolution no. 72 On the Standardisation of the Legal Concepts of Domicile and Residence (1972): 'The residence of a person is determined solely by factual criteria. It does not depend upon the legal entitlement to reside. In determining whether a residence is habitual account is to be taken of the duration and continuity of the residence as well as other facts of a personal or professional nature which point to durable ties between a person and his residence.'

211 This meaning of habitual residence is also used in private international law. See De Groot (2012), p. 122; J. d'Oliveira 'Het EVN: Een verkenning '[The EVN: An exploration] in: J. d'Oliveira (eds.) Trends in het nationaliteitsrecht [Trends in nationality law], The Hague: SDU, p. 45; S. Van Walsum, 'Foucault and the Illegal Alien. National Identity as Focus for Distinction and Control'. In Bergeron & Fitzpatrick (1998); K. Knop 'Citizenship, Public and Private', in Law and Contemporary Politics 2008; D.F. Cavers, 'Habitual residence': A Useful Concept?' The American University Law Review 475, 1971/1972 pp. 475-493.

years.[212]

5.4.2 Loss of Dutch nationality

Article 14, paragraph 6 of the NNA, in conjunction with paragraph 1, provides that Dutch nationality is not lost if statelessness results from it, unless Dutch citizenship was obtained by misrepresentation or fraud, or the concealment of any fact relevant to the acquisition or granting of citizenship. Article 68, paragraph 1 of the Decree regarding the acquisition and loss of Dutch citizenship provides that if this is the case, account should be taken of the nature and seriousness of the fraud and of the potential statelessness of the person concerned after revocation On this point the NNA is in accordance with the 1961 Convention. The 1961 Convention does not give an absolute prohibition on the deprivation of nationality, but a relative prohibition: States are not permitted to revoke nationality if this leads to statelessness. Article 8, paragraph 2 (b) of the 1961 Convention, however, provides the exception to this: denationalization is permitted even if statelessness is the result, if that nationality was obtained by misrepresentation or fraud.[213] The legislation also does justice to a recommendation of the Council of Europe[214] that causing statelessness should not occur automatically, but that the seriousness of the observed facts should be weighed against the consequences of the revocation of nationality, especially if this results in statelessness.[215] On this point the NNA is also in agreement with the EUN. Article 7, paragraph 1 (b) in conjunction with Article 7, paragraph 3 of the EUN provides that a State in its national legislation may not provide for the automatic loss of nationality or upon the initiative of the State if statelessness is the result, unless the nationality of that State was obtained through fraudulent conduct, false information or concealment of any relevant fact.[216]
The Committee points out that the literature questions the design of the revocation procedure in the Netherlands where the decision of the INS leads directly to the revocation of Dutch citizenship and the person concerned has to appeal against this decision as a non-Dutch citizen.[217] The 1961 Convention provides that the person involved has the right to be heard in a court of law or by an independent body.[218] It can be argued that effectiveness of the procedure requires that the person concerned be treated during the proceedings as if he were still in possession of the Dutch nationality. ACVZ refers in this connection to its legal opinion of 14 October 2013 regarding a proposal for a National Law to expand opportunities for revocation and the grounds for loss of Dutch citizenship in the case of terrorist activities, which is in line with this. In this report, the Committee recommends that the State Secretary of Security and Justice refrains from the proposed amendment of the grounds on which Dutch citizenship can be lost by

212 See UNHCR Guideline No. 4 Ensuring Every Child's Right to Acquire a Nationality, section 22: ' Some States make findings that a child is of 'undetermined nationality'.14 When this occurs, States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. For the application of Articles 1 and 4 of the 1961 Convention, it is appropriate that such a period not exceed five years.15 While designated as being of undetermined nationality, these children are to enjoy human rights (such as health and education) on equal terms as children who are citizens.' Cf. also G.R. De Groot 2013, p.269.

213 Art. 8, section 2 (b) 1961 Convention.

214 Council of Europe, recommendation no. R. (99), 18.

215 G.R. de Groot & M. P. Vink, Loss of Citizenship, Trends and Regulations in Europe, EUDO Citizenship Observatory, 2010 <http://eudo-citizenship.eu> see also Court of Justice Grand Chamber 2 March 2010, case no. (Janko Rottman v. Freistaat Bayern).

216 Art. 7 section 1 (b) in connection with art. 7 section 3 ECN.

217 O.W. Vonk, M.P. Vink and G.R. de Groot (2013).

218 Article 8 section 4 1961 Convention.

operation of law. The Committee believes that in all cases a judicial process should be available against the loss of Dutch citizenship. In the context of this opinion we will not elaborate further on this matter.

5.5 Statelessness in other countries

The Committee believes on the basis of the available information on statelessness determination procedures in other countries that there is no country that can serve completely as a model to be emulated. Hungary could be a model worth emulating for how the process can best be arranged. Hungarian law provides for procedural and substantive rules relating to the determination procedure, including rules of evidence. However, because Hungary excludes unlawfully resident aliens from the determination procedure, this country cannot in this respect be regarded as a model.

It is possible to draw a number of more general conclusions based on the information available.

Firstly, the Committee notes that few countries around the world have set up a determination procedure for stateless persons and that the Netherlands is thus no exception. Of the 85 countries that are party to the 1954 Convention, only twelve have an statelessness determination procedure. As a result of the renewed focus on statelessness, however, several countries are currently engaged in developing a procedure for determining statelessness.

Secondly, the information about the countries that do have a determination process shows that there is great diversity in legislation and in the conditions used, as well as in the rights during the procedure and the residence permit to be granted after the determination of statelessness. What is striking is that, except in Belgium, all countries allocate the determination of statelessness to an administrative, immigration or asylum service. Belgium is the only country where statelessness is determined by the courts. However, Belgium intends to assign this task in the future to the Commissioner General for Refugees and Stateless Persons.
Thirdly, it has been found that countries with a determination procedure, with the exception of Belgium, link a right of residence to this procedure for recognized stateless persons.
Fourthly, the Committee notes that the number of requests for determination of statelessness and the number of cases where statelessness is determined, compared with the number of immigrants in France, Spain, Hungary and Belgium is low. With regard to Spain and Hungary, this can be explained in part because the two countries have restricted access to the determination procedure by attaching a number of additional conditions. Nevertheless, the conclusion can be drawn that countries which have set up a determination procedure are not faced with a large influx of alleged stateless persons or with a significant increase in requests for determining statelessness.

CHAPTER 6

Conclusions and recommendations

6.1 Conclusions

1) Determination of statelessness is required to effect a number of rights under the 1954 Convention and the 1961 Convention. A proper determination of statelessness does not occur in the Netherlands.

In order to be able to give effect to a number of rights and obligations arising from the status of stateless person, a determination of statelessness is required, unless the State chooses to grant these rights and obligations to anyone who claims to be stateless without conducting further investigation. A determination procedure can also establish that the alien does have a nationality.

This applies to all stateless persons residing in the Netherlands with regard to the 1954 Convention, in particular the rights deriving from Article 6 (the term 'under the same conditions'), Article 12 (personal status), Article 27 (providing identity papers) and Article 30 (transfer of assets). The remaining rights for all stateless persons listed in the 1954 Convention, such as freedom of religion, are now also protected by other human rights treaties and by the Constitution.

Finally, for the exercise of the option right by stateless children born in this country, based on Article 1 of the 1961 Convention, a determination procedure is required.

GBA/BRP registration cannot be regarded as a determination procedure for stateless persons. Registration of statelessness in the GBA/BRP does not meet the requirements of a scrupulously fair procedure. In the first place, the GBA/BRP is a registration system that was never intended for a procedure from which subsequent rights could be derived. It was not set up for that. The burden of proof and evidence for registration of statelessness in the GBA/BRP lies entirely with the stateless person, and the municipality is not bound to meet the stateless person half-way in this. Registration of statelessness in BRP is not possible if this cannot be supported with documents, unless during residence proceedings it is accepted that an alien is stateless. Stateless persons are, true to the nature of the problem, often unable to meet this burden of proof. This requirement is in the opinion of the Committee in breach of Article 6 of the 1954 Convention, which provides that a stateless person for the exercise of a right must comply with all the requirements that he would have to meet if he were not a stateless person, with the exception of requirements which a stateless person cannot fulfil because of their nature.

Secondly, stateless persons not lawfully present in the Netherlands cannot be registered in the GBA/BRP. As a result, determination of statelessness for this group is not possible. Thirdly, the complexity of the matter and the differences in execution between municipalities involve a genuine risk of arbitrariness.

The no-fault procedure cannot be regarded as a procedure for determining statelessness either. The question of whether a person is stateless or not, is not or no longer relevant for review in the no-fault procedure and remains unanswered as a result. The test in

the no-fault procedure answers only the question of whether the alien will be admitted elsewhere, and not whether the alien has a nationality or a right of residence elsewhere. Furthermore, the no-fault procedure is not available to stateless persons who already have a residence permit.

2) On the basis of the purpose and approach of the 1954 Convention, the State must grant 'lawful' residence to stateless persons, unless a ground for exception or rejection is applicable.

A Convention must be interpreted in good faith and in a manner that makes effective the provisions of the Convention. If States did not have to accept the lawful residence of recognized stateless persons, this would deprive the Convention provisions on stateless persons who have lawful residence of any meaning. In addition, limiting those rights from the 1954 Convention to people whose presence and/or residence was already lawful prior to status determination would not do justice to the aim of the 1954 Convention. Only lawful residence can offer stateless aliens effective protection against the consequences of statelessness.[219] The problems of stateless aliens who are not lawfully present on Dutch territory probably do not differ substantially from the problems of non-stateless aliens who do not have lawful residence. The important difference is, however, that other aliens who are not lawfully present on Dutch territory can normally remedy their situation by returning to their own country where they can exercise the rights associated with having a nationality. This is not possible for stateless aliens. Leaving aside that expulsion will often be impossible, taking steps in preparation for the expulsion of an alien to which the Netherlands is obliged under the EU Return Directive is incompatible with the obligation to protect stateless persons.

3) The Netherlands is not acting in accordance with Article 6 and Article 32 of the 1954 Convention in its treatment of naturalisation applications from regular permit holders.

Stateless persons who have an asylum permit, like all other asylum status holders, do not have to comply with the requirement to submit a passport and a birth certificate if they wish to be naturalized. In addition, they do not need to comply with the renunciation requirement. Even if the stateless asylum status holder has been registered in the GBA/BRP as 'of unknown nationality', the way is open for him to neutralize his statelessness through naturalisation. This is different for stateless persons who have a regular residence permit. If they managed to register themselves as 'stateless' in the GBA/BRP, they do not need a passport and they also do not need to comply with the renunciation requirement. However, they generally do need to present a birth certificate. This requirement does not take into account the fact that stateless persons often do not have documents, can preclude naturalisation. If the stateless person with a regular residence permit has been registered in the GBA/BRP as 'of unknown nationality', he is not relieved of the passport requirement and the renunciation requirement, and naturalisation is made virtually

219 Question 2f in the request for advice from the State Secretary of Security and Justice is: 'How can it be prevented that any new procedure leads to the 'whitewashing' of unlawful residence?' If the Committee's recommendation to grant residence to stateless persons is successful, this will lead to stateless persons, who are now not lawfully present in the Netherlands, being soon possibly able to qualify for the said residence permit. This should then be classified as a desired outcome of the introduced policy and is, therefore, not an outcome which must be prevented and for which special measures should be taken.

impossible as these are conditions which a stateless person can never meet. As a result of this subsidiary legislation, the Netherlands is acting in respect of stateless persons with a regular residence permit in breach of the provisions of Article 32 of the 1954 Convention, which requires the States party to the Convention to facilitate the assimilation and naturalisation of stateless persons.

4) The condition of legal residence contained in Article 6 paragraph 2 of the Netherlands Nationality Act for the option right for stateless children born in this country is contrary to Article 1 of the 1961 Convention.

The 1961 Convention provides that stateless children born within the territory of a State should be able to acquire the nationality of that country after a maximum of five years' habitual residence. The Committee has identified three issues that cause the Netherlands to fail to comply with this treaty obligation. An entry in the GBA/BRP as a stateless person is a requirement for a person to be able to appeal to the special rules for stateless persons in the NNA. In the first place, the situation is that stateless children born in this country who are not lawfully present are not allowed to be registered in the GBA/BRP. Secondly, the parents of children who are allowed to be registered in the GBA/BRP must generally be able to show that their child is stateless, otherwise the child is registered as 'of unknown nationality'. In both cases the consequence is that the children are not recognized as stateless, making the child unable to claim corresponding rights. In the third place, the NNA specifies the requirement of lawful residence for at least three years. This requirement contravenes the 1961 Convention, which only mentions 'habitual residence'. Only those children can appeal to the right of option in the NNA who are born stateless in this country and can subsequently meet the conditions for a GBA registration, the heavy burden of proof for registration as stateless as well as the requirement of lawful residence. For all other stateless children born in the Netherlands these provisions do not provide relief.

6.2 Recommendations

Recommendation 1) Establish a statelessness determination procedure backed by garantuees.
On the basis of its research, the Committee has come to the conclusion that the Netherlands does not currently possess a good tool for determining statelessness as a result of which statelessness is not recognized in a number of cases. By setting up a determination procedure the Netherlands will be better able to comply with its treaty obligations. Also, the possible outcome that a person is not recognized as stateless, offers the Netherlands clarity about the legal status of the alien concerned. This determination procedure should have a legal basis. This will ensure that it is a fair and transparent procedure.

Because of its nature, only those States should be involved in this determination with which the alien has directly or indirectly relevant links, for example, through birth, descent, marriage or earlier residence. The application of the nationality law of these States is relevant for the determination. In part on the basis of the applicable nationality law, one should determine whether the alien has the nationality of one of these States. If it is established that the alien does not have the nationality of any of the States with which he has a connection, the alien should be identified as stateless.

1a) Adopt for the purposes of the procedure the definition of 'stateless persons' as in the 1954 Convention (*de jure* stateless persons)
The treaty obligations of the Netherlands extend only to *de jure* stateless persons. In the Netherlands *de facto* stateless persons can appeal to the no-fault policy.
An alien can be recognized as stateless if is determined that he meets the definition of Article 1, paragraph 1, of the 1954 Convention.

The phrase 'under the operation of its law' has been translated into Dutch as: 'by virtue of its legislation', which overly restricts its meaning. It is recommended that a treaty-based translation (under the operation of the law) be included in the NNA. To answer the question of whether a person is stateless, one should look not solely at the law, but should also assess how a State actually applies its nationality legislation in concrete cases. In addition, how other States interpret their own nationality law should be respected.

1b) Open the procedure to all aliens on Dutch territory.
Stateless persons who have lawful residence, as well as those who do not, can appeal to the 1954 Convention and the 1961 Convention. The procedure should, therefore, be accessible to all.

1c) Permit aliens to stay in the Netherlands during the procedure.
Permitting lawful presence to the applicant pending the decision on his request to allow lawful stay, ensures that a stateless person is not expelled in violation of Article 31 of the 1954 Convention. In addition, the applicant can then participate effectively in the proceedings and the procedure will be more likely to be seen as fair.

1d) Refer aliens, who raise asylum issues as well as statelessness first to the asylum procedure.
During a determination procedure it will frequently be necessary to establish contact with the authorities of the country where the stateless person has previously resided. This contact is not possible as long as an application for asylum is pending. Therefore, in those cases a determination procedure can start only after denial of the application for asylum. Contact with the authorities is not always necessary to determine statelessness, however. If statelessness becomes evident during the asylum procedure, it can be determined then.

1e) Adopt a shared burden of proof in the determination procedure.
Stateless persons cannot be required to produce evidence of their statelessness in all cases. Statelessness, after all, is often the cause of the inability to acquire (identifying) documents. In a procedure with a shared burden of proof, a person requesting a determination that he is stateless should present all the evidence he can reasonably acquire. If he has done that and there is still a need for additional evidence to assess his request, it is up to the assessing body to gather that additional evidence. This body often has access to channels (such as diplomatic contacts) which are not always available to an individual. If the person concerned manages to make it plausible that he is not a citizen of a State on the basis of the available evidence, the burden of proof should also shift to the State to prove otherwise. If, after the assessing body has made an effort to garner additional evidence on the basis of the available evidence (for example, the nationality law of a foreign State and the way in which that law is applied), and it is determined that the person concerned has a nationality, he does not qualify for recognition as a stateless person.

A shared burden of proof in the determination procedure should be laid down in a legal requirement since, in the Committees judgement, neither civil procedural law nor general administrative law provides sufficient guarantees for this.

Recommendation 2) Incorporate in the Aliens Act a new residence ground for the purpose of statelessness.
The Committee considers that a good faith interpretation of the 1954 Convention and the objective of the Convention, as formulated in the Preamble, requires States to grant 'lawful residence' to recognized stateless persons, unless grounds for exclusion apply. Currently, the Aliens Act lacks a justification for residence that does justice to the international protection of stateless persons.

2a) Categorise this residence permit for stateless aliens under the regular temporary or non-temporary humanitarian residence permit.
The Committee considers an addition to an asylum permit in accordance with Article 29 of the Aliens Act 2000 not desirable because a determination procedure can take place only if it is clear that asylum-related issues play no role (anymore). It is therefore obvious that a new regular humanitarian justification for residence should be introduced. If a new regular justification for residence is created, legislation should be passed that Article 16 (a) (valid authorization of temporary residence), (b) (valid passport), (c) (means of support), (f) (illegal work), (j) (unlawful residence) of the Aliens Act 2000 and by extension Article 18 paragraphs 1 (b), (d) and (i) of the Aliens Act 2000 (integration requirement) do not apply.

If, after granting the permit it becomes evident that the alien has provided incorrect details or withheld information, such as when the alien still appears to possess a nationality, then the residence permit (in accordance with Article 18, paragraph 1, point (c) in conjunction with Article 19 of the Aliens Act 2000) does not have to be renewed, or may be withdrawn.

Recommendation 3) Include in the procedure the exclusion grounds contained in Article 1, paragraph 2 of the 1954 Convention. Additionally, an analogous application of Article 31 of the 1954 Convention allows for the exclusion of persons that pose a risk to national security and public order. Also, persons who have residence rights elsewhere can be excluded from protection.
In addition to the grounds for exclusion set out in Article 1 of the 1954 Convention, stateless persons who pose a threat to public order or national security may also be excluded from protection pursuant to Article 31 of the 1954 Convention. On the basis of other international law, stateless persons who have lawful residence in another State may be excluded. Expulsion of a stateless person who has a right of residence elsewhere does not conflict with the object and purpose of the Convention; the stateless person then has the enjoyment of rights and freedoms elsewhere.

Recommendation 4) Waive the birth certificate requirement for naturalisation in the case of recognised stateless persons.
The issue of the identity and nationality of an alien is central in a determination procedure for statelessness and features strongly in that context. If, in such proceedings the alien is recognized as a stateless person, it is not necessary to doubt the identity of the alien at naturalisation, unless new facts and circumstances have come to light. The requirement of a birth certificate in the case of recognized stateless persons raises a barrier which undermines the treaty obligation that States should facilitate the naturalisation of stateless persons.

Recommendation 5) Drop the legal residence requirement for stateless children born in the Netherlands who wish to acquire Dutch nationality bij option.
The requirement of legal residence for the option right of stateless children born in this country is in the opinion of the Committee in violation of the 1961 Convention and must, therefore, lapse.

Chapter 7 of the original report 'Drafts of possible determination procedures' has not been translated.

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APPENDIX I

Persons and organizations consulted

Implementing agencies and policy departments and ministries
Directorate-General for Administration and Kingdom Relations, Citizenship and Information Policy, Identity Department, Ministry of the Interior and Kingdom Relations
Migration Policy Secretariat, Ministry of Security and Justice
Department of Legislation, Ministry of Security and Justice
Repatriation and Departure Service
Integration and Society Secretariat, Department of Youth Participation, Ministry of Social Affairs and Employment

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Municipality of Utrecht
Municipality of The Hague
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K.J. Swider MSc, Research Assistant, University of Amsterdam
Dr. L.E. Van Waas, Senior Researcher/Manager of the Statelessness Program, University of Tilburg

Other persons and organizations
UNHCR
European Network on Statelessness
The Hague Court
Statistics Netherlands
Amnesty International
Roma representative in the Netherlands
Law firm in Haarlem

APPENDIX II

Abbreviations

1954 Convention	Convention relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness
ACVZ	Advisory Committee on Migration Affairs
BRP	Basic Registration of Persons Act
CASSS	Convention on the Avoidance of Statelessness in relation to State Succession
CBS	Statistics Netherlands
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CGVS	General Commissioner for Refugees and Stateless Persons (Belgium)
ECN	European Convention on Nationality
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ENS	European Network on Statelessness
EU	European Union
GBA	Municipal Personal Records Database
GNNA	Guide to the Netherlands Nationality Act
ISA AIG	Interim Supplement to the Aliens Act Implementation Guidelines
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Convention on the Rights of the Child
INS	Immigration and Naturalisation Service
IPM GBA	Implementation Procedures Manual to the GBA
NGO	Non Governmental Organisation
NNA	Netherlands Nationality Act
NVvB	Dutch Association for Civil Affairs
OAR	Oficina de Asilo y Refugio (Spain)
OFPRA	Office Française de Protection des Réfugiés et Apatrides (France)
UCHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency

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- mr. T.M.A. Claessens (Tom), former judge and member of the Dutch Council of State
- prof.dr. J.P. van der Leun (Joanne), Professor of Criminology, Leiden University
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